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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1240.

F. L. AMES, ELISHA ATKINS, EZRA H. BAKER, F. G. DEXTER, CHARLES FRANCIS ADAMS, JUNIOR, ET AL., CALLING THEMSELVES THE BOARD OF DIRECTORS OF THE UNION PACIFIC RAILWAY COMPANY, PLAINTIFFS IN ERROR,

vs.

THE STATE OF KANSAS EX REL. W. A. JOHNSTON, ATTORNEY GENERAL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED JANUARY 14, 1884.

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1 In the Supreme Court of the state of Kansas.

The State of Kansas ex rel. W. A. Johnston, as attorney general of the state of Kansas, plaintiff,
vs.
F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, T. T. Eckert, Augustus Schell, and John Sharp, calling themselves the board of directors of the Union Pacific Railway Company, defendants.

Be it remembered, that on the 12th day of July, A. D. 1883, there was filed in the office of the clerk of the Supreme Court of the state of Kansas a petition in the above-entitled cause, which is in words and figures as follows, to wit:

2 *Petition.*

To the honorable judges of the Supreme Court of the state of Kansas:

W. A. Johnston, attorney general of the state of Kansas, who sues for the said state in this behalf, comes here before the judges of the Supreme Court of the said state, on the — day of ——,
3 A. D. 1883, at the July term of said court for the state of Kansas, and gives the said court here to understand and be informed that F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, T. T. Eckert, Augustus Schell, and John Sharp, calling themselves the board of directors of the Union Pacific Railway Company, do now, and have since January 24th, 1880, used, and still do use, without any warrant, charter, or grant, the following liberties, privileges, and franchises, viz.: That of being a railroad company, to use, operate, and enjoy, and to receive the tolls, issues, profits, and benefits derived from the operation and use of the Kansas Pacific Railroad, being a line of railroad beginning at Leavenworth, in the state of Kansas, and extending in a general westerly direction, by the way of the Fort Riley military reservation, to the city of Denver, in Colorado, and beginning at the state line of Kansas, at a point near the junction of the Missouri and Kansas rivers, and running west to a junction with said line, at a point near the city of Lawrence, Kansas; which said line and lines of railroad, with all their properties, equipments, easements, subserviences, privileges, rights, liberties, and franchises were, prior to the said 24th day of January, 1880, used, occupied, controlled, and enjoyed by the Kansas Pacific Railway Company, which said Kansas Pacific Railway Company derived its right to so use, enjoy, employ, and exercise the same, under an act passed in the year 1855, at a session of the legis-

lature of the territory of Kansas, which act was entitled "An act to incorporate the Leavenworth, Pawnee and Western Railroad Company," and the further act passed by the legislature of the territory of Kansas, in the year 1857, at a session of said legislature, supplemental to said act of 1855, entitled "An act supplemental to an act entitled 'An act to incorporate the Leavenworth, Pawnee and Western Railroad Company,' " of all of which liberties, privileges, and franchises aforesaid, the said individuals, F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould,
4 Russell Sage, Solon Humphreys, T. T. Eckert, Augustus Schell, and John Sharp, calling themselves the board of directors of the Union Pacific Railway Company, during all the time aforesaid, have usurped, and still do usurp upon the said state, to her great damage and prejudice. Whereupon the said attorney general prays the advice of the said court in the premises, and due process of law against the said individuals, F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, T. T. Eckert, Augustus Schell, and John Sharp, calling themselves the board of directors of the Union Pacific Railway Company, in this behalf to be made to answer to the said state by what warrant they claim to have, use, and enjoy the liberties, privileges, and franchises aforesaid; and that, upon a due hearing hereof, the said defendants, and said pretended railroad company, be adjudged to have unlawfully and wrongfully usurped and appropriated the rights, liberties, privileges, and franchises aforesaid, and to be wrongfully and unlawfully using, enjoying, and exercising the same, and that they be ousted therefrom.

W. A. JOHNSTON,
Attorney General of the state of Kansas.

J. S. BLACK,
W. H. ROSSINGTON,
A. A. HARRIS,
GEO. S. GREEN,
Of Counsel.

(A true copy.)

C. J. BROWN,
Clerk Supreme Court, Kansas.

5 And, also, on the 6th day of August, A. D. 1883, there was filed in the office of the clerk of the Supreme Court of the state of Kansas a waiver of the issuance and service of summons, which is in words and figures as follows, to wit:

In the Supreme Court of the state of Kansas.

The State of Kansas ex rel. W. A. Johnston, as attorney general, plaintiffs,
vs.
The Kansas Pacific Railway Company, defendant.

The State of Kansas ex rel. W. A. Johnston, as attorney general of the state of Kansas, plaintiff,
vs.
F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, T. T. Eckert, Augustus Schell and John Sharp, calling themselves the board of directors of the Union Pacific Railway Company, defendants.

I hereby enter appearance of the defendants in both of the above-entitled causes, and waive service of process.

A. L. WILLIAMS,
Attorney for Defendants.

And afterwards, on the 2d day of October, A. D. 1883, before the said court, in session at the Supreme Court room in the city of Topeka, the following proceedings, among others, was had and entered of record as follows, to wit:

The State of Kansas ex rel., &c., plaintiff,
vs.
F. L. Ames et al., defendants.

On stipulation of counsel for both parties herein, it is ordered that the hearing of this cause be continued to the November A. D. 1883 session of this court.

And afterwards, on the 31st day of October, A. D. 1883, there was filed in the office of the clerk of the Supreme Court of the state of Kansas the answer of defendants, which is in words and figures as follows, to wit:

6 In the Supreme Court of the state of Kansas.

The State of Kansas ex rel. W. A. Johnston, as attorney general, plaintiff,
against
F. L. Ames et al., calling themselves the Board of Directors of the Union Pacific Railway Company, defendants.

Answer.

John F. Dillon, J. P. Usher and A. L. Williams, attorneys for defendants.

7 In the Supreme Court of the state of Kansas.

The State of Kansas ex rel. W. A. Johnston, as attorney general of the state of Kansas, plaintiff,
against
F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, T. T. Eckert, Augustus Schell and John Sharp, calling themselves the board of directors of the Union Pacific Railway Company, defendants.

Answer.

I. The above-named defendants deny that at the time of the commencement of this suit they did call themselves the board of directors of the Union Pacific Railway Company; and further answering, say that Isaac H. Bromley, a citizen of Connecticut; George H. Haven, a citizen of New York; Watson Parrish, a citizen of Nebraska; Arthur L. Conger, a citizen of Ohio, and
8 Colgate Hoyt, a citizen of New York, are also members of said board; and that defendants have not assumed to act as the board of directors of the Union Pacific Railway Company, or as members thereof, except in conjunction with the individuals last named.

Defendants further say that William L. Scott and Thomas T. Eckert are not now members of said board, nor claiming to be such, but that their term of office has expired and the Union Pacific Railway Company has elected in their place and stead Charles Francis Adams, jr., a citizen of Massachusetts, and Andrew H. Green, a citizen of New York, who are now members of said board.

That the defendants Ames, Atkins, Baker and Dexter are, and were at the time of the commencement of this action, citizens of Massachusetts; that the defendant Dodge is, and was at the time of the commencement of this action, a citizen of Iowa; and that the defendants Dillon, Dows, Gould, Humphreys and Schell are citizens of New York, and were such at the commencement of this action; that defendant John Sharp is, and was at the time of the commencement of this suit, a citizen of Utah; that defendant Clark is now, and was at the time of the commencement of this suit, a citizen of the state of Nebraska, and that the defendant Scott is now, and was at the time of the commencement of this suit, a citizen of Pennsylvania.

II. Defendants Scott, Eckert and Sharp disclaim and say that they do not now call themselves, or pretend to be, directors of the Union Pacific Railway Company aforesaid. Said Sharp has resigned and his successor has not yet been elected.

III. The other defendants, namely, Ames, Atkins, Baker, Dexter, Clark, Dodge, Dillon, Dowes, Gould, Sage, Humphreys
9 and Schell, say that they, with Adams and Green before named, do pretend to be and in fact are members of and com-

pose part of the board of directors of the Union Pacific Railway Company.

That under and pursuant to the provision of the said acts of Congress, the President of the United States has ever since the organization of the Union Pacific Railway Company, regularly appointed in addition to the fifteen directors elected by the stockholders five government directors; and that the names of the present government directors of the Union Pacific Railway Company are as follows, namely: Isaac H. Bromley, a citizen of Connecticut; George G. Haven, a citizen of New York; Watson Parrish, a citizen of Nebraska; Arthur L. Conger, a citizen of Ohio, and Colgate Hoyt, a citizen of New York, all being citizens of states other than Kansas, who, together with the said company's directors, compose the board of directors of the Union Pacific Railway Company.

And these defendants claim and insist that the said goverment directors are necessary parties to this suit.

IV. And defendants further say that the Union Pacific Railway Company was created and organized under and by authority of an act of Congress of July 1st, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Mississippi river to the Pacific ocean, and to secure to the government the use of the same for postal, military and other purposes," and the act of July 2d, 1864, amendatory thereof, and various other acts of Congress supplementary thereto.

Defendants further say that the organization aforesaid was effected by a consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, each and all of said companies corporate being being named and described in said act of Congress and endowed by Congress with corporate franchises and powers, and expressly authorized to consolidate with each other. That such consolidation was effected by virtue of articles of union and consolidation, which articles were executed by said companies respectively by the due consent and approval of the stockholders of each of said companies, and after the execution thereof were duly filed in the department of the interior as by said acts of Congress provided, which said articles are in substance, if not in words, set forth in the petition in this cause.

V. Further answering, the defendants say that the said Union Pacific Railroad Company, one of the parties to said articles of union and consolidation, is the corporation chartered by the said act of Congress of July 1, 1862, and the said amendatory acts, and authorized to participate and did participate in the benefits of said acts.

VI. Defendants say that the said Kansas Pacific Railway Company, one of the parties to said articles of union and consolidation, was at the time of the said consolidation a corporation created by and existing under an act of Congress, approved July 1, 1862, entitled an "Act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to

the government the use of the same for postal, military and other purposes;" and an act amendatory thereof, approved July 2, 1864, entitled "An act to amend an act entitled an act to aid in the construction of a railroad and telegraph line from the Missouri
11 river to the Pacific ocean, and to secure to the government the use of the same for postal, military and other purposes, approved July 1st, 1862," and other acts of Congress amendatory thereto, copies of which said two named acts of Congress of July 1, 1862, and July 2, 1864, are herewith printed and made part of this answer, and marked respectively as Exhibits A and B in appendix No. 2, hereto attached.

Defendants further say that the Kansas Pacific Railway Company, thus incorporated and existing by said acts of Congress and said amendatory acts, proceeded to build and did build its line of road on the route marked out by the said acts of Congress and not otherwise, and under the franchises and rights and powers granted and conferred by said acts of Congress, and in the manner and under the terms prescribed by said acts, and not otherwise. That the route thus selected by Congress was not the one mentioned and described in the charter of the Leavenworth, Pawnee & Western Railroad Company referred to in the said acts of Congress, nor was the railroad built by the Kansas Pacific Railway Company in any way ever constructed, managed or operated under said last-mentioned charter, or any charter or legislation or territory or state of Kansas.

Defendants, further answering, say that Congress, intending to provide for the construction of a national highway from the Missouri river to the Pacific ocean, and secure the government of the United States the use of the same for postal, military and other purposes, and branches to connect the same at various points on the Missouri river with the main line or trunk, passed the aforesaid act of July 1, 1862, and for the same purpose subsequently made several amendments thereof.

That as an integral part of the said scheme and purpose, Congress made provision in the said acts for the incorporation
12 of a railroad company to construct a railroad from the Missouri river, at the mouth of the Kansas river, so as to connect with the Pacific Railroad of Missouri at the eastern end, and with the Union Pacific Railroad Company at the western end; and to accomplish the construction of said branch to connect the Pacific Railroad of Missouri with the main line or trunk of the road of the Union Pacific Railroad Company, and the other purposes set forth in the said acts of Congress, Congress itself directly conferred and granted the necessary rights, powers and franchises upon the persons composing the Leavenworth, Pawnee & Western Railroad Company to become a corporation of the United States, with the same name, property, members and interests that they had in the then existing organization, but with the rights, powers and franchises directly granted, conferred and set forth in the said acts of Congress; and Congress required the said Kansas company

to file its acceptance of the conditions of said act of July 1st, 1862, in the department of the interior, within six months after the passage of the last named act, and the said Leavenworth, Pawnee & Western Railroad Company of Kansas did accordingly file such acceptance in the interior department within the time so limited.

That after the said acceptance was thus filed, the said company thus created and incorporated, by the names successively of the Leavenworth, Pawnee & Western Railroad Company, the Union Pacific Railroad Company, Eastern Division, and the Kansas Pacific Railway Company, under the authority and by means of the subsidies conferred and granted in that behalf by the said acts of Congress and not under the authority conferred or granted by the territory or state of Kansas, constructed the road on the route selected, prescribed and authorized by Con-
13 gress, and not on the route specified in the territorial charter, extending from a connection with the Pacific railroad of Missouri, in the state of Missouri, near the mouth and on the south side of the Kansas river, to the city of Denver, in the state of Colorado, a distance of 638.50 miles, (of which 393 15-16 miles were subsidized by the bonds, and 638 miles by a grant of lands of the United States,) and a branch from Leavenworth to Lawrence, (subsidized by lands but not by government bonds,) a distance of 30.87 miles, which roads so constructed were continuously thereafter used and operated, and still are used and operated, under the authority derived from the said acts of Congress, and not under authority derived from the territory or state of Kansas, all of which was done by the procurement and with the assent of the state of Kansas. No other roads or branches have ever been constructed by the said Kansas Pacific Railway Company except the said road to Denver and the Leavenworth branch, constructed and subsidized as aforesaid by lands and bonds of the United States.

VII. Defendants say if it be true and shall be held that the effect of the said acts of Congress was not as aforesaid to confer distinct and independent corporate capacity upon the Leavenworth, Pawnee & Western Railroad Company, or its members, as a corporation of the United States, under the name and designation of the Leavenworth, Pawnee & Western Railroad Company, that, nevertheless, t h intent and legal effect and operation of the said acts of Congress, in connection with the legislative acts of the territory and state of Kansas, were directly to grant and to confer upon the said railroad company distinct, independent, and plenary power and authority immediately derived from the Congress of the
14 United States, and not from the territory or state of Kansas, to construct and operate the railroad, and only railroad that was afterwards built and operated, extending from the eastern terminus in Missouri, at the connection with the Pacific railroad of Missouri to the city of Denver, including the branch from Leavenworth to Lawrance; that the same were constructed by the said Kansas Pacific Company under and solely by virtue of the powers, authority, and franchises conferred and granted by the said acts of Congress, and

not under and by virtue of any powers, authority, or franchises derived from or granted by the territory or state of Kansas; that said road and branch were built and equipped by means of the subsidies of bonds and lands received by the said company from the United States under and pursuant to said acts of Congress, and by means of money borrowed by it on mortgages authorized to be made by the said acts of Congress, and that the conditions of the said grants contained in said acts of Congress to the said company have at all times been kept and performed by the company, and that the government of the United States and the public are entitled to have the said road used, maintained, and operated by it or its successor, the Union Pacific Railway Company, as part of the Pacific system of railways provided for in said acts of Congress; that the government of the United States has the right to have the said road kept in working order and operated to the end, that it may at all times, and particularly in the time of war, have the use and benefits of the same for military, postal, and other purposes; and the right to have the net earnings and the compensation of the company for government service applied on the debt to the United States, as in said acts of Congress provided in this behalf; and the defendants say that company and its said successor is under corresponding duties to the government, arising out of the said acts of Congress and legislative contract with the government contained in the said acts accepted as aforesaid, the performance of which duties, or any part thereof, it is not within the power of the state of Kansas to prevent by legislation or judicial forfeiture; that to effect the ends of Congress, as specified in the said acts, the state of Kansas relinquished and surrendered to the government of the United States the paramount and exclusive control for all of the purposes declared in the said act of the railroads that should be constructed under the authority conferred and granted by Congress as aforesaid, so far, at least, as to vest in the United States and in said company, as the representative therein of the United States, a contract right, secured to it by the constitution and laws of the United States; that the said company should at all times have and enjoy, independent of any future action of the state of Kansas, each and all the powers and duties which, in and by the said acts of Congress, it was stipulated and provided that the said company should at all times enjoy and perform. Defendants, further answering, say that among the conditions and provisions in the said acts of Congress it was expressly provided and enacted that the whole line of the said railway company and branches and telegraph should be operated and used for all purposes of communication, travel, and transportation, so far as the public and government are concerned, as one connected, continuous line; that the companies therein named in Missouri, Kansas, and California (including said Kansas company by name) should file their assent to said acts; and that for the purpose of securing the operation of the said railroads and branches as one continuous line,

it was, in and by the said act, further expressly stipulated
16 and provided, "That at any time after the passage of this act all of the railroad companies named herein and assenting hereto, or any two or more of them, are authorized to form themselves into one consolidated company."

And these defendants further say that said Kansas company, having filed its assent to the provisions of the said act, and having participated in the benefits conferred thereby, and so coming under the duty thereby imposed to operate its railroad as one continuous line with the other railroads enumerated in said act, and particularly with the railroad of the Union Pacific Railroad Company and the Denver Pacific Railway and Telegraph Company, said company found itself obliged and required in the performance of said duty and for the better service of the public and government, as provided by the said act, to form itself into one consolidated company with the said Union Pacific Railroad Company and the said Denver Pacific Railway & Telegraph Company as aforesaid; and defendants aver that cheaper and better service to the government and public have resulted therefrom, as contemplated by the said act.

Defendants state and aver that said Kansas Pacific Company was, at and before the date of said consolidation, wholly unable to make payment of its debts and current interest charges, including those prior in lien to the United States, and was in point of fact wholly disabled from making the payments and performing the duties of the United States required by the said acts of Congress without the said consolidation.

And these defendants aver that said Kansas Pacific Company thereupon entered into such consolidation, and that the consolidate company has ever since made said payments and performed duties
as required of the said Kansas Pacific Company by said acts
17 of Congress, being thereto enabled by the fact of said consolidation, and not otherwise.

And defendants further aver and state that if the said consolidation were annulled by the judgment of this court or otherwise, then said Kansas Pacific Company would be and become unable thenceforth to make said payments or perform said duties as required by law; such consolidation relation being indispensable thereto.

And these defendants say that among the powers and contract rights of said Kansas Pacific Company were the power and right to unite and consolidate its organization with that of any one or more of the companies authorized to participate in the benefits of said acts, and the duty and obligation of said company or its successor by assignment or consolidation to pay the subsidy bonds received from the government at maturity, to keep the said railroad in repair and use, transmit mails, troops and munitions of war and public stores for the government whenever required to do so by any department thereof, giving the government at all times the preference in the use of the same for the purposes aforesaid, at the contract rates of compensation fixed in said acts; that until the said

subsidy bonds and interest thereon were paid, to apply annually at least five per centum of the net earnings of the road to the payment thereof, and one-half of the compensation for services rendered by the said company to the payment of said subsidy bonds issued by the government in aid of the construction of said road; that for more than twenty years prior to the institution of this suit the state of Kansas had assented to the said acts and had recognized and affirmed the paramount and exclusive control of Congress over the roads thus constructed under the authority and by means
18 of the right and subsidies of bonds and money granted by Congress; and so these defendants submit that no judgment in this proceeding can be rendered which would disable the said Kansas Pacific Company or its successor, the Union Pacific Railway Company, from discharging towards the government and the public every duty which the said acts of Congress enjoined and required.

Further the answering, defendants say that they are advised and state that the said charter granted by the territorial legislature of Kansas did not reserve to the legislature the power of amendment or repeal, and defendants are advised that no power existed to amend or change the same without the consent of the company; that said charter when accepted and acted upon by the company, constituted a contract with the company and its members, which no subsequent act of the legislature of Kansas could impair, and that it is and was beyond the legislative power and competency of the state of Kansas by any legislation subsequent to the granting of the said charter or subsequent to the acceptance thereof, by the company, or subsequent to the company's acceptance of the act of Congress of July 1, 1862, as herein stated, to changed, without consent, the rights of the company, or its members, or of the United States, or to effect by any repeal rights existing at the date of said last-named acceptance, or to impose additional duties upon or to subject the company to forfeiture for newly-created causes.

VIII. Defendants further say that on the 3d of March, 1869, the Congress of the United States passed an act entitled, "An act to authorize the transfer of lands granted to the Union Pacific Railway Company, eastern division, between Denver and the point of its connection with the Union Pacific Railway, to the Denver Pacific Railway & Telegraph Company, and to expedite the completion of railroads to Denver, in the territory of Colorado," for the purpose of authorizing the said first-named company "to contract with the Denver Pa-
19 cific Railway & Telegraph Company for the construction, operation and maintenance of that part of its line of railroad and telegraph between Denver city and its point of connection with the Union Pacific Railroad which point shall be at Cheyenne, and to adopt the road bed already graded by said Denver Pacific Railway and Telegraph Company as said line, and to grant to said Denver Pacific Railway & Telegraph Company the perpetual use of its right of way and depot grounds, and to transfer to it all the rights and privileges subject to all the obligations pertaining to said part of its

line," a copy of which said act of Congress is hereto attached, marked Exhibit D, in Appendix 2, and made a part of this answer. In pursuance of said act of Congress the said first-named company made the contract therein authorized; the road from Cheyenne to Denver was accordingly built and completed in 1870, and became, for the purposes of the act of Congress, a part of the Kansas Pacific Railway Company and of the Pacific system, so as to form the connection with the Union Pacific Railroad at Cheyenne, as originally contemplated in the act incorporating said first-named company and the Union Pacific Railroad Company.

IX. On the 24th of January, 1880, the Union Pacific Railroad Company, a corporation duly organized and existing under the act of Congress of July 1st, 1862, and the act of Congress of July 2d, 1864, being Exhibits A and B aforesaid, and various other acts amendatory of the same, and the Kansas Pacific Railway Company, a corporation also organized and existing under the acts of Congress last referred to, and the Denver Pacific Railway & Telegraph Company, which by an act of Congress approved June 20, 1874, "That the Denver Pacific Railway and Telegraph Company shall be deemed and taken to be a part and
20 extension of the road of the Kansas Pacific Railroad to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyenne, as provided in the act of March 3d, 1869," entered into an agreement of union and consolidation, whereby the three companies severally agreed to and with each other to unite and consolidate, and thereby they did unite and consolidate their respective organizations, properties and companies into one consolidated company, which succeeded to and became entitled to possess and receive from the government of the United States all and singular the grants, benefits, immunities, guarantees, acts and things to be done and performed, and became subject to the same terms, conditions, restrictions, and requirements which the three companies respectively at the date of the consolidation were entitled to under the acts of Congress in that behalf, in place and substitution of the said constituent companies so consolidated; and the said consolidated company, by said articles of consolidation, assumed to and for itself, that by the various acts of Congress hereinbefore recited, it was entitled to the benefit of all the provisions of said acts of Congress, so far as applicable, relating, or in any manner pertaining to said constituent companies or either of them.

These defendants aver the said consolidation was made, formed and effected in strict conformity with the said acts of Congress, and that the said articles of union and consolidation have, since their execution and filing in the interior department, been carried out and consummated, as in this answer set forth, whereby and by force of the premises the Kansas Pacific Company's organization has become united and consolidated with that of the consolidated company; new stock has been created and issued by the consolidated company, as hereinafter
21 stated, and exchanged for the stock of all of the con-

stituent companies, and the said consolidated company thus formed has succeeded in the place and substitution of said constituent companies to all their roads and properties, rights, powers and privileges, and subject to obligations to the public and the government of the United States; that by force of the said consolidation and conveyances duly executed, the consolidated company acquired the roads built as aforesaid by each of said constituent companies, and the right to operate the same, and has since operated the same, fulfilling all of its duties to the government and to the public, as a part of the Pacific system of railways chartered and authorized by Congress as aforesaid.

A copy of said articles of union and consolidation was duly filed in the department of the interior January 26th, 1880.

A copy of said articles of union and consolidation, marked Exhibit C, in Appendix 3, hereto attached, is made a part of this answer as fully as if set forth herein at length.

Defendants say that the terms and conditions and manner of said consolidation were not incompatible with the said acts of Congress, or the laws of Kansas, or of the state or states in which the roads of the said constituent companies were situate.

These defendants insist and allege that the power to consolidate, as aforesaid, is derived from the said acts of Congress, which acts were assented to by the state of Kansas, and defendants aver that in executing the said power of consolidation the Kansas Pacific Company, as well as the other constituent companies, conformed with the terms and conditions which were required by the laws of the state of Kansas and the other states to effect a consolidation of railway corporations, under the laws of the said states, and
22 furthermore acted within the powers conferred by the laws of Kansas and said other states upon the said Kansas Pacific and said other companies. To this end the said articles of consolidation were ratified and approved by due corporate vote of each of the said companies, and also by parties representing more than two-thirds of all of the stock of each of the constituent companies, including the said Kansas Pacific Railway Company, which ratification and approval on the part of the shareholders of last-named company were in writing, and a certified copy of the articles of consolidation and of such ratification and approval were duly filed with the secretary of the state of Kansas on the 30th day of April, 1880, and also in the department of the interior.

Defendants say that, prior to the 26th day of April, 1880, said articles of consolidation were ratified and approved by 199,084 shares out of 200,000 shares in the Kansas Pacific Railway Company, and that all of the shareholders of said company, with the exception of thirty-one shares, have since exchanged their shares of stock for the stock of the consolidated company, all of which was done years before the present suit was commenced.

And the said articles of consolidation were in writing, duly approved and ratified on or about January 24th, 1880, in conformity with the laws of the state of Colorado, applicable to the consolidation of railways in said state, by every shareholder and stock-

holder in said Denver Pacific Railway and Telegraph Company, and the said articles of consolidation were also duly approved and ratified by a stockholders' vote at a meeting of the said company duly called and held at the city of Denver, Colorado, on the 30th day of September, 1880, at which meeting every share but one was represented, and 39,999 shares voted for such approval and ratification, and none against it. Every share of the said stock of the said company has long since been exchanged for the stock
23 of the consolidated company. Said articles of consolidation were duly filed in the office of the secretary of state of Colorado on the 2nd day of August, A. D. 1880, and also in the department of the interior.

Said articles of consolidation were also approved and ratified in writing by more than two-thirds of the stockholders of the Union Pacific Railroad Company on or about January 24th, 1880, and the same were also approved and ratified by a recorded vote of the stockholders of said company at a special meeting of the stockholders duly called and held in the city of Omaha, August 18th, 1880. Not a vote was cast against the ratification and approval of the said articles of consolidation at the said meeting. Said articles of consolidation were duly filed in the office of the secretary of state of Nebraska, and also in the department of the interior. The consolidated company, soon after the consolidation was made, issued its stock in exchange for the stock of said constituent companies, and all of the stock of the Union Pacific Railroad Company has long since been exchanged for the stock of the consolidated company, except 1,930 shares, most of which has, however, assented to said consolidation.

The government directors officially reported on December 16, 1880, to the secretary of the interior, that the said consolidation had been made, and printed in the said report the said articles of consolidation *in extenso*. The auditor of railroad accounts, appointed under the act of Congress of June 19, 1878 (20 Stat., 169), also officially reported, on November 1, 1880, the said consolidation to the secretary of the interior, and the same was thereupon, by the said secretary, officially communicated to Congress, and the said consolidation has been recognized and acted upon by every
24 officer and department of the government whose office and duty is to act with respect to the said railroad.

Immediately upon the said consolidation being effected, the question arose as to whether the provisions of law in respect of government directors applied to the new organization, and if so, then as to the extent of the jurisdiction and power of the government directors in respect of the consolidated property. The company, on the 26th day of January, 1880, postponed the decision of the question until the next annual meeting; whereupon the government directors communicated the fact to the secretary of the interior, who submitted the matter to the attorney general of the United States, who, on the 8th day of March, 1880, gave the following official opinion:

(Copy.)

DEPARTMENT OF JUSTICE,
WASHINGTON, *March 8th*, 1880.

HON. CARL SCHURZ,
Secretary of the Interior:

SIR: I have received your note of even date, and as I am requested to answer it at once, I reply that in my opinion no consolidation could be made of the Union Pacific R. R. with other companies which should enable them to exclude government directors therefrom, in the proportion named in the 13th section of the act of July 2d, 1864. While a consolidation was contemplated, it will be seen by examining the section 16th of that act, which relates to the consolidation of these companies, that it is clearly contemplated thereby that all provisions for the benefit of the United States, so far as applicable, relating or in any manner apertaining to the companies so consolidated, were to apply and be in force in such consolidated organization.

Very respectfully, your obed't servt.,

CHAS. DEVENS,
Attorney General.

25 Ever since which time the President of the United States has regularly appointed, under the said acts of Congress, five directors of the consolidated company, who have acted and still act with the company's directors in the management of its affairs; and the present government directors are the five persons hereinbefore named as such.

Since the said consolidation, the Union Pacific Railway Company has, in conformity with law, to provide "the means of meeting its obligations, improving, bettering, and equipping its roads, and thereby increasing the value of the existing property, and to enable the company to afford better facilities to the public," increased its authorized capital stock to $61,000,000, divided into shares of $100, instead of $50,762,300, as fixed in the articles of consolidation. Defendants say that the present outstanding stock of the consolidated company held by the public is $60,868,500. On the 29th day of January, A. D. 1881, such increase of stock was officially communicated to the department of the interior, and the auditor of railroad accounts, in answer thereto wrote to the solicitor of the company as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF AUDITOR OF RAILROAD ACCOUNTS.
WASHINGTON, D. C., *February* 15, 1881.

DEAR SIR: Your letter of the 29th ultimo, with inclosures referring to the issue of additional stock by the Union Pacific Railway Company, has been received.

The purpose for which this additional capital is to be used, as set forth in the circular of the 20th ultimo, and the fact that the entire amount is payable in money at the par value of the shares, preclude any exceptions which might otherwise have been taken to

this action on the part of the company. This additional capital must undoubtedly result in increasing the value of all the
26 company's property, and thus add to the security of all of its creditors.

Very respectfully, THEOS. FRENCH,
Auditor.

Such increase of stock was communicated to Congress and no objection thereto made by it.

Said consolidated company has also issued and sold in the markets its negotiable bonds for money borrowed by it, to the extent of several millions of dollars, which bonds by their terms do not fall due for about twenty-five years.

The stock and securities of the said consolidated company have been listed in the stock exchanges of New York, Boston, and elsewhere, and have been freely and largely dealt in by the public and are easily bought and sold. The said consolidated company has over 4,000 stockholders in Europe and America.

Since the said consolidation was made, all contracts touching the operation of the said roads and properties acquired by the consolidated company have been made by it, and conveyances for many thousand acres of land in Kansas and elsewhere executed by it. On the faith of the said consolidation, the consolidated company has entered into numberless transactions, and incurred expenditures and liabilities amounting to more than $75,000.000.

Under the said acts of Congress to aid in the construction of the said road, the said Kansas Pacific Railway Company received United States bonds to the amount of $6,303,000, on which the interest, accumulated to the 30th day of June, 1883, amounts to $6,129,333.09, all of which, both principal and interest, remains unpaid, and is not due and payable for many years to come, except such portion of the interest as may be paid out of the application of five per cent. of the net earnings of the company and one-
27 half of the compensation for services rendered to the government as provided in said acts.

The said Kansas Pacific Railway Company, under the express authority of the said acts of Congress of July 1, 1862, July 2, 1864, March 3, 1865, and March 3, 1869, and not under any authority from the territory or state of Kansas, has executed the following mortgages upon its said road, equipment, and income, to wit:

Mortgage dated 1st day of August, 1865, due in thirty years from date, $2,240,000.

Mortgage dated 1st day of June, 1866, due in thirty years from date, for $4,063,000.

Income mortgage dated July 1, 1868, due in thirty years from date, for $4,275,650.

Mortgage dated 1st day of June, 1869, due in thirty years from date, bonds now outstanding, $6,310,000.

Mortgage dated 1st day of January, 1866, due in thirty years from date, on the Leavenworth branch, for $600,000.

Consolidated mortgage dated 1st day of May, 1879, due in A. D. 1919, under which bonds are outstanding and unpaid for $15,640,000, and in all of the said mortgages this defendant conveyed its said road and franchises, and pledged its earnings. The principal sums in said the mortgages do not fall due for many years to come, and the interest on the fixed obligations of the company, secured by the said mortgages, has been and is regularly paid by the consolidated company.

X. And defendants further say that if the said Kansas Pacific Company was originally incorporated by the act of the legislature of Kansas, it became entitled, by virtue of the acts of Congress hereinbefore set forth, to consolidate with the said companies as aforesaid, and that further authority to thus consolidate, even if it were incorporated by the territory of Kansas, was granted by an act of the state of Kansas approved March 5th, 1862, entitled "An act relating to railroad companies," (Compiled Laws of Kansas of 1862, p 767,) a copy of which said act of the legislature of the state of Kansas is hereto attached, marked Exhibit D, of Appendix 1, and made part hereof.

28

And the defendants further say that the conditions mentioned in the proviso to said section authorizing the consolidation as aforesaid, were all duly complied with before said consolidation took effect. The defendants further say that said law, although general in its terms, has special reference to the Leavenworth, Pawnee & Western Railroad Company, to which company lands had then been ceded by the Pottawatomie Indians, by a treaty then pending in the United States Senate, there being no other treaty pending by which such lands were ceded to any other company.

And defendants further say that the said Leavenworth, Pawnee & Western Railroad Company was authorized to make said consolidation by an act of the legislature of the State of Kansas, passed in 1865, section 22 of which is as follows:

Extract from laws of Kansas, 1865, p. 101.

SEC. 22. Any railroad company in this state forming a continuous or conecting line with any other railroad company, may consolidate with such other company, either in or out of this state into single corporation, in the manner following: First, any two or more railroad corporations may, by their directors, enter into an agreement, under the corporate seal of each, for the consolidation of the two or more corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the names and places of residence and number of the directors thereof, which shall not exceed nineteen, the time and place of holding the first election of directors, the number of shares of capital stock in the new corporation, the amount of each share, which will not be less than one hundred dollars, the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporation, the manner of compensating stockholders in each of said two or more corporations who refuse to convert their stock into the stock

29

of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporation shall possess all the powers, rights, and franchises conferred upon such two or more corporations, and shall be subject to all the restrictions and perform all the duties imposed by the provisions of this act.

And also by an act of the legislature of the state of Kansas, approved March 1, 1870, which reads as follows:

[EXTRACT FROM SECTION 1 of "An act to provide for the consolidation and extension of railroads in the state of Kansas," approved March 1, 1870. Laws of Kansas of 1870, p. 195.]

"*Be it enacted by the legislature of the state of Kansas:*

SECTION 1. Any two or more railroad companies in this state, existing under general or special laws, and owning railroads constructed wholly or in part, which when completed and connected will form a continuous line or lines of railroad, and any railroad company organized as aforesaid, and any railroad company duly organized and existing under the laws of an adjoining state, whose lines of railroad shall connect at the state line so as to form when completed a continuous line of railroad, are hereby authorized to consolidate and form one company owning and controlling such continuous line or lines of railroad, with all the rights, powers, privileges, and immunities, and subject to all the obligations and liabilities to the state, which belong to or rested upon either of the companies making such consolidation."

30 Defendants further say, that the state of Kansas at all times, until the passage of the joint resolution in 1883, authorizing this suit to be brought, has recognized the said Kansas Pacific Company as a corporation existing under and by virtue of the acts of Congress aforesaid, and subject to the exclusive control and regulation of Congress aforesaid, by various concurrent resolutions adopted at different times; copies of which resolution, marked N, O, P, and Q, in Appendix 1, hereto attached, are made a part of this answer.

Defendants say that by the resolutions, marked Exhibit N, adopted March 1, 1864, the legislature of the state of Kansas asked Congress to compel said company to make Wyandotte, Lawrence, Topeka, Wabaunsee, Manhattan, and Junction City, points on its road, whereas, by the charter of the Leavenworth, Pawnee & Western Railroad Company, as conferred by the act of the territorial legislature, said Leavenworth, Pawnee & Western Railroad Company had the chartered right to omit from its line of road all of said towns; and Congress in the said act of July 2d, 1864, conformed to the wishes of the state as thus expressed, by requiring said company to construct its road by the way of Lawrence and Topeka, or on the bank of the Kansas river, opposite said towns, which the company did.

Defendants further say that by the resolution, marked Exhibit O, adopted in February, 1867, and P, adopted in 1868, the state of Kansas urged Congress to extend further aid to said road, and to authorize its extension to the Pacific coast.

Defendants further say that by a resolution, marked Exhibit Q, adopted in February, 1874, the state of Kansas expressly affirmed that Congress organized and created said Kansas Pacific Company as one of the branches of the Union Pacific Rail-
31 road Company as incorporated by act of Congress, and complained that the Union Pacific Railroad Company was guilty of continued and persistent violation of law, "in its refusal to recognize the Kansas Pacific, formerly the Union Pacific Railway, eastern divicion, as one of the branches contemplated in the original act of July 1, 1862, and the subsequent amendments thereto, and by its further refusal to grant unto said Kansas Pacific, or Union Pacific Railway, eastern division, all the privileges, immunities, and benefits, as provided for by said acts of Congress; and Congress accordingly passed the said act, approved June 20, 1874. (18 Stats. at Large, 111.)

XI. The defendants say that Congress passed a joint resolution, approved March 3d, 1869, which read as follows:

"Joint resolution authorizing the Union Pacific Railway Company, eastern division, to change its name to the Kansas Pacific Railway Company. Be it resolved by the senate and house of Representatives of the United States in Congress assembled, that the Union Pacific Railway Company, eastern division, is hereby authorized, by resolution of its board of directors, which shall be filed in the office of the secretary of the interior, to change its name to the 'Kansas Pacific Railway Company,' approved March 3d, 1869."

And that the name of said company was changed by virtue of said joint resolution, and not otherwise.

XII. Defendants allege that neither the said charter of the said Leavenworth, Pawnee & Western Company, granted by the territory of Kansas, nor any other act of the legislature of Kansas, gave the said company any power or authority whatever to
32 build a road to the mouth of the Kansas river, and to the south side thereof; and that the authority to build a road to the mouth of the Kansas river, and to connect with the Pacific Railroad of Missouri, was contained in the aforesaid acts of Congress chartering the Pacific system of railroads; and in and by the said charter, the road which this defendant was authorized to construct was required by said acts of Congress to be constructed from the mouth of the Kansas river, on the south side thereof, so as to connect with the Pacific Railroad of Missouri. The Pacific Railroad of Missouri was a state corporation chartered by the state of Missouri, with power to construct a road from "the Mississippi river, or any other point in the city of St. Louis, to any point on the western line of the state of Missouri which said company may select." The said Pacific Railroad of Missouri fixed its western terminus in the large and important city of Kansas City, in the state of Missouri, which city is situated near to, but not on, the state line of Kansas. The said Kansas Pacific Railway Company, in order to make its connection with the Pacific Railroad of Missouri, as required by the said act of Congress, was obliged to

construct, and did construct, about three-quarters of a mile of road into the said Kansas City, and into the state of Missouri, and into the union depot in the said Kansas City, and there connected with the Pacific Railroad of Missouri and many other roads terminating in Kansas City, all of which was done many years ago, as required by the acts of Congress, with the assent both of the states of Missouri and of Kansas. The said union depot in Kansas City is 3,220 feet east of the state line of Kansas.

XIII. Under the authority given by section 9 of the said
33 act of Congress, July 2d, 1864, and section 1 of the act of Congress of July 3, 1866, the Kansas Pacific Railway Company did not build its road to the one hundredth meridian in Nebraska, but built the same continuously through the state of Kansas and into the territory (now and at the date of said consolidation the *state*) of Colorado to the city of Denver, in said state of Colorado, and under the act of Congress of March 3d, 1869, and pursuant thereto, it connected its line by road, by means of the Denver Pacific Railway & Telegraph Company, with the road of the Union Pacific Railway Company at Cheyenne in Wyoming territory, at or near the state line of Colorado. Said road was completed to Denver on or about August 15, 1870, and to Cheyenne on or about September 1, 1870.

Defendants say that in the construction of so much of its said railroad as lies beyond the state line of Kansas and within the territory of Colorado, the said Kansas Pacific Railway Company was authorized, in and by the acts of Congress hereinbefore referred to, to build, and did build the same as a corporation of the United States; created and authorized thereto by the necessary effect and operation of the said acts of Congress as hereinbefore set forth. Nevertheless, if it shall be held that it was not the necessary effect and operation of the said acts of Congress thereby to create and to make the said company a corporation of the United States, then defendants submit that in the construction and operation of so much of its said railroad as lies within the then territory and now state of Colorado aforesaid, said company was acting as a corporation of the territory, now state, of Colorado, and was, in fact, within the meaning of said Kansas act of March 1, 1870, a railroad company, duly organized and existing under the laws of the said state of Colorado, whose lines of railroad connected at the state line so as to form one complete and continuous line of railroad with the
34 railroad owned and operated by the said Kansas Pacific Railway Company as a corporation of the state of Kansas.

Defendants aver that the said line of railway, so consolidated as aforesaid, at the date of such consolidation did connect with the said line of the Kansas Pacific Company at the state line of Kansas, so as to form one completed and continuous line of railroad.

XIV. These defendants further say that the constituent companies executing said agreement of consolidation, executed the same in due form and in conformity to the acts of Congress and by authority thereof; and they aver that in the execution of the same said companies had full authority and warrant in law; and that

since the execution of the same, these defendants, with their co-directors, have exercised, and these defendants together with the said government directors do exercise the liberties, privileges and franchises appertaining to the board of directors of the said Union Pacific Railway Company, and that the said company has used, operated, received and enjoyed the tolls, issues, profits and benefits derived from the operation of the railroads of each of the several constituent companies consolidated as aforesaid, and that all of the acting and doings of the defendants and said government directors in the premises have been in strict conformity to the several acts of Congress herein before referred to, and that they have been and are by the United States, the public and all persons in authority recognized as acting in strict conformity with the law in the operation and management of said railroads, and they have been governed in the premises by the provisions of the acts of Congress above referred to.

35 XV. For further answer defendants say that all allegations in said petition not herein expressly admitted, are denied, and they ask that the plaintiff be required to make strict proof of the same.

XVI. The defendants annex to this answer as an exhibit copies of various acts of Congress and of the Kansas legislature and other official documents pertaining to the Union Pacific & Kansas Pacific Railroad Companies.

XVII. These defendants, though protesting and insisting that the said petition is insufficient, have nevertheless fully answered the same, and prays that it may be dismissed and discharged by the court hereof and from the premises aforesaid.

JOHN F. DILLON,
J. P. USHER,
A. L. WILLIAMS,
Attorneys for said Defendants.

THE STATE OF NEW YORK, }
City and County of New York, } *ss:*

Sidney Dillon, being duly sworn, says he is one of the defendants, and is the president of the Union Pacific Railway Company, that he knows the contents of said answer, and that the facts therein stated are true as he verily believes.

36 THE STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Edward Canfield, notary public in and for said city, county and state, do hereby certify that the above and foregoing answer and verification was signed by the said Sidney Dillon, in my presence, and sworn to by him before me, this — day of October, 1883.

Witness my hand and official seal hereto set the date last above written, notary public as aforesaid.

37 ACTS OF CONGRESS AND KANSAS LEGISLATURE,

AND OTHER DOCUMENTS, PERTAINING TO THE

UNION PACIFIC AND KANSAS PACIFIC RAILROAD COMPANIES.

Topeka, Kansas: Kansas Publishing House, 1881.

38 APPENDICES.

APPENDIX 1..... KANSAS RAILROAD LAWS.
APPENDIX 2..... ACTS OF CONGRESS.
APPENDIX 3..... CONSOLIDATION.

39, 40 [Blank pages.]

41 APPENDIX 1.

Kansas Railroad Laws,

Including charter of Leavenworth, Pawnee & Western Railroad Company, amendment thereto in 1857, and other laws and resolutions of the state affecting the Kansas Pacific Railroad.

A.

[LAWS OF 1855, P. 915.]

AN ACT to incorporate the Leavenworth, Pawnee & Western Railroad Company.

Be it enacted by the governor and legislative assembly of the territory of Kansas as follows:

SECTION 1. A company is hereby incorporated, called the Leavenworth, Pawnee & Western Railroad Company, the capital stock of which shall be five millions of dollars, to be divided into shares of fifty dollars each; the holders of which, their successors and assigns, shall constitute a body corporate and politic, and by the name aforesaid shall have continual succession, may sue and be sued, plead and be impleaded, defend and be defended against, and may make and use a common seal and change and alter the same at pleasure, and shall be able in law and equity to make contracts; may take, hold, use, possess and enjoy the fee-simple or other title in and to any real estate necessary to carry out the provisions of this act, and no more, and may sell, convey, pledge, mortgage or dispose of the same; may make by-laws, rules and regulations proper and necessary for carrying into effect the provisions of this act, not repugnant to the constitution or laws of the United States or of this territory, and shall have the usual and necessary powers of companies for such purposes.

SEC. 2. W. H. Russell, J. Marion Alexander, S. D. Lecompte, Amos Rees, James Davies, W. F. Dyer, Robert Wilson, James Findlay, E. S. Wilhoit, Edward H. Dennis, C. H. Grover, Wilburn Christison, M. P. Rively, Charles Hayes, and Cornelius M. Burgess, or any five of them, shall constitute the first board of directors un-

der this act, and shall hold their office until their successors shall be qualified; they shall, within five years from the date of the passage of this act, meet at such time and place as shall be designated by any three of them, and organize as a board of directors; and when organized, they shall cause books to be opened for subscription to the capital stock of the said company, at such time and
42 place as they may designate, under the supervision of such persons as they may appoint, and may continue them open so long as they may deem proper, and may reopen such books when necessary until the whole stock shall be subscribed.

SEC. 3. So soon as three thousand shares shall be subscribed, the directors shall cause an election to be held for nine directors, at such time and place as they may appoint, and give notice of the same in two or more public newspapers.

SEC. 4. An election for nine directors shall be held on the first Monday in April in each year, and if not held on that day, an election may be held at any other time that the directors shall designate; the election shall be held under the supervision of three or more stockholders, and the persons receiving the highest number of votes shall be elected, and shall continue in office until their successors be qualified; every stockholder shall be entitled to one vote for each share held by him, and he may vote by proxy; soon after the election, the directors shall meet and elect one of their number as president, who shall hold his office for the term for which he was elected director, and until his successor shall be qualified.

SEC. 5. The directors shall appoint agents, clerks, engineers, superintendents, and other officers and servants for said company, and shall keep a journal of their proceedings, and shall cause correct books and accounts to be kept; they may determine by law what number of directors shall constitute a quorum, may appoint committees, and fill all vacancies in any office under said company; they shall fix the salaries of the president, and the officers and agents; they may take security of their officers and agents, and may adopt such measures and do such acts as will be best calculated to promote the prosperity and usefulness of said company.

SEC. 6. The directors shall make and advertise calls for the payment of the capital stock at such times and in such manner as they may deem proper, and if any stockholder shall fail to pay any such requisitions within ten days after the time appointed, the said company shall recover the same with interest, and if not collected may direct the stock forfeited, and sell the same; and no delinquent stockholder shall vote in said company.

SEC. 7. Said company shall have full power to survey, work, locate and construct a railroad from the west bank of the Missouri river, in the town of Leavenworth, in this territory; and from thence west to the town of Pawnee or to some point feasible and near to the government reservation for Fort Riley, with the privilege of extending the same to the western boundary of the territory, and for
43 the same to the western boundary of the territory, and for that purpose may hold a strip of land not exceeding one hundred feet

in width, with as many set of tracks as the said president and directors may deem necessary: *Provided*, That in passing hills or valleys the said company are authorized to extend said width in order to effect said object, and may also hold sufficient land for the erection of depots, warehouses and water stations, and may extend branch railroads to any point in any of the counties through which the said road may be located; and said company shall have power to construct a branch road from any point in the main trunk of said road to the town of Kickapoo, on the Missouri river; no discrimination shall be made between the main trunk of said railroad and the branches connecting with the same, in regard to the rates of passage and the charges for freight shipped over the same.

SEC. 8. Said company shall take voluntary relinquishments of the right of way for said road, and the necessary depots and water stations; and if the land through which said road shall pass shall belong to minors, in whole or in part, the guardian or curator of such minors shall have power to convey to said company so much of the land as may be necessary for the purposes aforesaid, on fair and equitable terms, but every such relinquishment shall be subject to the approval or rejection of the probate or other court in which such guardianship is pending. If any owner of any tract of land through which said railroad shall pass shall refuse to relinquish his right of way for said railroad to said company, or the necessary land for depots, engine or wood houses, water station, stopping stages, or turnouts, or if the owners be infants or persons of unsound mind, or non-residents of the territory, the facts of the case shall be especially stated to the judge of the District Court of the county, or presiding judge of the Court of Common Pleas of the county, as the case may be, in which such lands are situated, and said judge shall appoint three disinterested citizens of the county in which said lands are situated to view said lands, who shall take into consideration the value of the land, and the advantages and disadvantages of the road to the same, and shall report under oath what damages will be due to said lands or any improvements thereon, stating the amount of damages assessed, and shall return a plat of the land thus condemned; notice of such application to such judge shall be given to the owner of such land five days before the making of the application, if such owner reside in this territory, or to his guardian; and if such owner be a non-resident of this territory he may be served with actual notice or by an advertisement for four weeks in some public newspaper.

SEC. 9. The persons appointed to view and value such lands shall file their report and plat in the office of the clerk of the District Court or Court of Common Pleas, as the case may be, of the county in which the land or a part thereof is situated; and if no valid
44 objections be made to said report the court shall enter judgment in favor of such owner against such company for the amount of damages assessed, and shall make an order vesting in said company in fee-simple, title of the land in such plat and report described.

Objections to such report must be filed in ten days; after the same shall have been filed, said objections shall be examined by said judge, in term-time or vacation, and he may hear testimony and by judgment confirm said report, or he may set the same aside and appoint three other viewers, who shall proceed in the same manner and make a report until a report is confirmed: *Provided*, In order that the progress of the work may not be impeded, that after said owners have filed their report and plat in the office aforesaid, the company, after having made a tender of the amount of damages to the person or persons entitled to the same, or made a deposit of the amount with the clerk of the court in which the case may be pending, shall be authorized to proceed in the construction of the work as fully as though no disagreement had arisen. In all such cases the court shall adjudge the costs of the proceedings according to equity, and the court shall have power to make such orders and take such other steps as will promote the ends of justice between the owners of such lands and the said company; and the said viewers shall be entitled to the same fees as are allowed to commissioners in partition under the statute.

SEC. 10. Said company may build said road along or across any public road or street or wall of any town or city and over any stream or highway; but whenever said road shall cross any public road, said company shall keep good and sufficient cause-ways or other adequate facilities for crossing the same; and said road shall not be so constructed as to prevent the public from using any road, street or highway along or across which it may pass; and when said railroad shall be built across any navigable stream, said company shall erect a bridge sufficiently high on which to cross, or shall construct a drawbridge, so that in no case shall the free navigation of such stream be obstructed. When any person shall own lands on both sides of said road, said company, when required so to do, shall make and keep in good repair one causeway or other adequate means of crossing the same.

SEC. 11. Said company shall commence the construction of said road within five years and shall complete the same within twelve years thereafter; and said company shall have general power to use, manage, control and enjoy said road; shall determine what kind of carriages shall be used thereon, and by whom or in what manner; and shall determine the terms, condition and manner in which merchandise, property and passengers shall be transported; and shall have power to construct and keep such turn-outs, gates, culverts, toll-houses, depots, warehouses, causeways and other buildings, machinery and fixtures as may be necessary. Said company may receive such tolls and freights as may be determined upon by the directors, and shall keep posted up in their depots estimates of the rates of tolls and freight charged.

SEC. 12. Dividends of so much of the profits of said company as shall appear advisable to the directors shall be declared semi-annually, and be paid to the stockholders or their legal

representatives, on application at the office of said company, at any time after the expiration of ten days from the time of declaring the same; but the dividends shall in no case exceed the amount of the net profits actually acquired by the company, so that the capital stock shall never be impaired thereby; and if the said directors shall make any dividend which shall impair the capital stock of the company, the directors consenting thereto shall be liable in their individual capacities to the company for the amount of capital stock so divided; and each director present when such dividend shall be declared shall be considered as consenting thereto, unless he immediately enter his protest on the minutes of the board and give public notice to the stockholders of the declaring of such dividends.

SEC. 13. At every annual meeting of said company the directors shall make to the stockholders an exhibit of the affairs and condition of the company; one-tenth part in interest of all the stockholders may call a meeting by giving four weeks' notice in two public newspapers.

SEC. 14. When said road shall be completed, the company shall file a plat thereof in the office of the secretary of the territory, or of the state or states, as the case may be, and the legislature may at any time require a statement from the company as to the progress of the work, the amount of business and the receipts of the company; and the books and accounts of said company may at any time be investigated by a committee appointed by the general assembly; and the said corporation shall make an annual report to the secretary of the territory, or of the state or states, as the case may be, of the operations of the year ending on the first day of December, which report shall be verified by the oaths of the treasurer and acting superintendent of operations, and filed in the office of the secretary of the territory, or of the state or states, as the case may be, by the third Monday in December, in each year, and shall state: *first*, the capital stock and the amount actually paid in; *second*, the amount expended for the purchase of land for the construction of the road, for buildings, and for engines and cars, respectively; *third*, the amount and nature of its indebtedness and the amount due the corporation; *fourth*, the amount received for the transportation of passengers, of mails, of property, and from all other sources; *fifth*, the amount of freight (specifying the quantity in tons) of the products of the forest, of animals, of vegetable food, other agricultural pro-
46 ducts, manufactures, merchandise, and other articles; *sixth*, the amount paid out for repairs; *seventh*, the number and amount of dividends and when made; *eighth*, the number of engine houses and shops, of engines and cars and their character; *ninth*, the number of miles run by passenger, freight and other trains, respectively; *tenth*, the number of men employed and their occupations; *eleventh*, the number of persons injured in life or limb, and the cause of such injuries; *twelfth*, whether any accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation.

SEC. 15. It shall be lawful for the county court of any county in which any part of the route of said railroad may be, to subscribe to the stock of said company; and it may invest its funds in the stock of said company and issue the bonds of such county to raise funds to pay the stock thus subscribed, and to take proper steps to protect the interests and credit of the county. Such county court may appoint an agent to represent the county, vote for it, and receive its dividends; and any incorporated city, town, or incorporated company may subscribe to the stock of said company and appoint an agent to represent its interests, give its vote, and receive its dividends, and may take proper steps to guard and protect the interests of such city, town or corporation.

SEC. 16. Said company shall keep a fair record of the whole expense of constructing said road, and at the end of fifty years the state or states through which the said road shall pass shall be at liberty to purchase said road by paying to said company the amount at which it shall be valued by persons to be mutually chosen by the state and by said company; but two years' notice shall be given to said company of the intention of the state to purchase said railroad.

SEC. 17. When any person ceases to be a stockholder he shall cease to be a member of said company.

SEC. 18. If any person shall wilfully injure, obstruct, or destroy said railroad, or shall break, destroy, or deface any work, edifice, or other fixtures or improvement belonging to said company, he shall be considered guilty of a criminal offense and shall be punished in such manner as shall be prescribed by law; and shall also be liable to said company for all damages by it sustained.

SEC. 19. The operations of said company shall be confined to the general business of locating, constructing, making and using said railroad, and the acts necessary or proper to carry the same into complete and successful operation.

SEC. 20. The stock of said company shall be considered personal property, and shall be assignable and transferable according to such rules and restrictions as the board of directors shall from time to time make and establish, subject, however, to the laws of the territory or any future state erected out of this territory, as the same may
47 be made. In case that it shall happen at any time that an election of directors shall not be made on any day when pursuant to this act or any regulations of said company it ought to have been made, the said corporation shall not for that cause be deemed dissolved; but it shall and may be lawful on any other day to make and hold an election of directors in such manner as shall be regulated by the by-laws and ordinances of the company.

SEC. 21. Said company shall have power to receive and hold loans, gifts, grants, and donations of land, money or bonds in any quantity from this territory, or from any future state erected out of this territory, or the United States; and may sell, convey, pledge, mortgage or otherwise dispose of said land, moneys or bonds, or any part

thereof, and apply the proceeds of the same to the construction of said railroad.

This act to take effect and be in force from and after its passage.

B.

[PRIVATE LAWS OF KANSAS TERRITORY, 1857, PAGE 218.]

AN ACT supplemental to an act entitled "An act to incorporate the Leavenworth, Pawnee & Western Railroad Company."

Be it enacted by the governor and legislative assembly of the territory of Kansas as follows:

SECTION 1. The provisions of an act entitled "An act to incorporate the Leavenworth, Pawnee & Western Railroad Company," shall be and the same are hereby so extended as to enable said company to commence and progress with, at any time with nine years from the date of the passage of this act, the construction of a railroad, to be called the "Southern Branch and Gulf Railroad," beginning at some favorable point on the Leavenworth, Pawnee & Western Railroad, and following the most practicable route southwardly, to terminate on the southern boundary of the territory of Kansas, at some point where an easy connection may be had with a line of railroad extending through the Indian territory and state of Texas to the gulf of Mexico, under the same provisions, privileges, rights and restrictions as provided in the act to which this act is a supplement; and for said purpose the said company may increase their capital stock to ten millions of dollars, or any other amount necessary for the completion of the said road.

SEC. 2. The said company shall have, hold and enjoy the
48 free right and privilege of keeping and maintaining a public ferry across the Missouri river, at the point or terminus of said road on said river; and also across other streams on the line of said road, where the said company may deem such ferry preferable to a bridge, or until such time as said company can procure bridges.

SEC. 3. The said company shall have power and authority at any time within nine years from the passage of this act, to commence and continue the construction of a branch or branches of said road from any point on said road to any point on the southern or western boundary of the territory; and also to construct a branch from any point on the said road to any point on the northern boundary of the territory of Kansas, with all the privileges, powers and rights granted to said company by the act to which this is a supplement, and subject to all the restrictions and provisions of said act.

This act to take effect and be in force from and after its passage.

Approved February 23, 1857.

C.

[LAWS OF KANSAS, 1861, P. 237, CHAP. 52.]

AN ACT relating to railroad companies whose charters have not been declared forfeited.

Be it enacted by the legislature of the state of Kansas:

SECTION 1. That it shall be lawful for all railroad companies whose

charters have not been declared forfeited, to hold, by grant or otherwise, from any source whatever, any real or personal estate, and to sell, dispose of, convey, and encumber, all or any part to which such corporations may acquire title, by grant or otherwise, for the purpose of securing or aiding the construction of said roads, and that the period of two years is hereby given to all such companies to commence the actual construction of their respective roads.

SEC. 2. This act shall take effect and be in force from and after its publication in some newspaper published in Topeka.

I hereby certify that the above bill became a law by publication in the Topeka *State Record*, June 24, 1861.

J. W. ROBINSON,
Secretary of State.

49 D.

[COMPILED LAWS OF KANSAS OF 1862, P. 767.]

AN ACT relating to railroad companies.

Be it enacted by the legislature of the state of Kansas:

SECTION 1. Any railroad company now organized or which shall hereafter organize under the laws of Kansas, may, at any meeting regularly called of all the stockholders thereof, by vote of persons holding a majority of the stock of such company, unite or consolidate it with any other company or companies now organized or which may be hereafter organized under laws of the United States, or of any state or territory, by the consent of the company with which it may so consolidate and unite, and such company or companies with which it shall so unite or consolidate, may hold, use and enjoy all the rights and privileges conferred by the laws of Kansas on the company or companies so uniting or consolidating with it, and shall be liable for all the debts and own all the property and franchises of such company or companies: *Provided*, That any companies thus united for the purpose of the construction of a railroad and branches thereof from the western boundary of the state of Missouri to the Pacific ocean, shall, upon equal terms, have the right to run through cars upon said Pacific Railroad as far and as fast as the same is completed from the points on the Missouri river from which said roads or branches shall start, or where such road or branches shall cross said river; and that such roads or branches shall have the right to connect with said Pacific Railroad at such points as may be determined by the respective roads or branches; and that such roads or branches shall share equally in the proceeds of any public lands which may be hereafter ceded or granted by any treaty with any Indian tribe, or by any act of Congress to aid in the construction of any or all such roads. But this amendment shall not apply to the lands already ceded by the Pottawatomie Indians by a treaty now pending in the United States senate. Such proceeds to be applied in proportion to the length of the line of each road from the respective points on the Missouri river, where such roads shall

ta rt or cross the same, to the points of connection; and that such branches shall have the right to transport passengers and freight upon through cars, or otherwise, upon equal terms, and to enjoy equal facilities in respect to contracts for freight or passage on such Pacific Railroad in every respect.

SEC. 2. Any railroad now organized, or which may hereafter organize under the laws of the state or territory of Kansas, shall have the right to construct and operate along its proposed route a line of telegraph, as soon as the work of construction of such road shall have been commenced, with all the rights, privileges and franchises given to any telegraph company under any law of the state or the territory of Kansas.

50 SEC. 3. Any such railroad company, by vote of persons owning a majority of its stock, at any meeting regularly called of all the stockholders of such company, may change its corporate name or the number of its directors at pleasure; and may, in like manner, make valid and effectual any acts done in good faith, and may cause to be done any acts omitted, affecting the organization or affairs of such company, or the continuance of its charter, though such acts may have been done or omitted contrary to the regulations of such company or the requirements of law: *Provided*, The time given by law to such railroad company, within which to commence the construction of its road, shall not be hereby extended.

SEC. 4. Any railroad company, now organized under the laws of the state or territory of Kansas, may extend their road, and construct the same still further in the same general direction, under the same restrictions now embodied in their charters, and may increase their capital at the rate of $15,000 per mile, for every mile so constructed.

SEC. 5. Any railroad company, now organized under the laws of the state or territory of Kansas, may receive subscriptions to the capital stock of their road in lands, lots, houses, or any personal property, at such valuation as may be agreed upon with the party or parties; and the company may sell, mortgage, or pledge such real or personal property to raise money or materials for construction, equipping, or operating said road.

SEC. 6. For the purpose of enabling any company to construct, equip, and operate their road, they are hereby authorized to pledge or mortgage said road, rolling stock, machinery, depots, and any other property they possess, together with the franchise of said road, for the liquidation of any indebtedness said railroad company may incur in the construction of said road.

SEC. 7. All deeds for the conveyance of real estate of said company shall be signed by the president of said company, and attested by the secretary, with the corporate seal attached, which shall be deemed and held as sufficient execution, authentication and acknowledgment of such deeds in all courts.

SEC. 8. This act shall take effect and be in force from and after

its publication; and the secretary of state is directed to cause it to be published immediately after its passage.

I hereby certify that the above bill originated in the house, on the 25th day of February, A. D. 1862, and passed that body on the 4th day of March, A. D. 1862.

JAMES McGREW,
Speaker pro tem. House of Representatives.
JOHN FRANCIS,
Chief Clerk House of Representatives.

51 Passed the Senate March 4, 1862.

A. R. BANKS,
Secretary.
J. P. ROOT,
President of the Senate.

Approved March 5, 1862.

C. ROBINSON.

I hereby certify that the above is a true copy of the original enrolled bill now on file in my office.

J. W. ROBINSON,
Secretary of State.

E.

[LAWS OF 1859, P. 90; APPROVED FEBRUARY 11, 1859.]
Code Civil Procedure.

SEC. 56. An action against a railroad company, or an owner of a line of mail stages or other coaches, for any injury to persons or property upon the road or line, or upon a liability as a carrier, may be brought in any county through or into which said road or line passes.

F.

[LAWS OF 1855, P. 209.]

SEC. 27. That the county of Leavenworth shall be bounded as follows: Beginning at a point on the southern boundary of Atchison county, due north of a point four miles west of Dawson's crossing of the Fort Riley road, on Stranger creek; thence due south to the main channel of Kansas river; thence down said channel to where said channel crosses the channel of the Missouri river; thence up said channel of the Missouri river to the southeast corner of Atchison county; thence along the southern boundary of said Atchison county to the place of beginning.

[LAWS OF 1857, P. 43; APPROVED FEBRUARY 20, 1857.]

SEC. 27. The county of Leavenworth shall be bounded as follows: Beginning at the southeast corner of Atchison county; thence west

with the south boundary of Atchison county to the corner to sections 21, 22, 27 and 28, of township 7, south of range 20, east; thence south with the section lines between the third and fourth tiers of sections to the main channel of the Kansas river; thence down said Kansas river, in the middle of the main channel thereof, to the intersection of the middle of the main channel of the Missouri river; thence up said Missouri river, in the middle of the main channel thereof, to the place of beginning.

52 G.

[LAWS OF 1859, P. 362; APPROVED JAN. 29, 1859.]

AN ACT creating and organizing the county of Wyandotte.

Be it enacted by the Governor and Legislative Assembly of the territory of Kansas:

SECTION 1. That a county to be called Wyandotte, be hereby erected, including that portion of Leavenworth and Johnson counties lying within the following limits: Commencing at a point in the middle of the channel of the Missouri river, where the north line of the Delaware reserve intersects the same; running thence west on said reserve line, to the line between ranges twenty-two and twenty-three; thence south on said range line to the south boundary line of Leavenworth county; thence easterly on said boundary to the middle of the main channel of the Missouri river; thence northwesterly with said main channel to the place of beginning; also that portion of Johnson county lying north of the township line between townships eleven and twelve, east, of range twenty-three.

H.

[LAWS OF KANSAS, 1859, P. 544, CHAP. 89.]

AN ACT repealing certain laws.

Be it enacted by the Governor and Legislative Assembly of the territory of Kansas:

SECTION 1. All laws of the territorial legislature passed previous to the first day of January, A. D. 1857, are hereby repealed.

SEC. 6. This act shall not be construed to affect or interfere with vested rights, but such rights shall be and remain as secure as if this act had never been passed.

A. LARZELERE,
Speaker of the House of Representatives.
C. W. BABCOCK,
President of the Council.

Approved February 11, 1859.

S. MEDARY,
Governor.

53

I.

[LAWS OF KANSAS, 1861, P. 238, CHAP. 53.]

An Act to change the name of the Leavenworth, Pawnee & Western Railroad Company.

Be it enacted by the legislature of the state of Kansas:

SECTION 1. That the name of the Leavenworth, Pawnee & Western Railroad Company be and is hereby changed to the Leavenworth, Fort Riley & Western Railroad Company.

This act shall take effect and be in force on and after its passage.

Approved June 4, 1861.

J.

[EXTRCT FROM LAWS OF KANSAS, 1865, P. 101.]

SEC. 22. Any railroad company in this state, forming a continuous or connected line with any other railroad company, may consolidate with such other company, either in or out of this state, into single corporation, in the manner following: First, any two or more railroad corporations may, by their directors, enter into an agreement, under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the names and places of residence and number of the directors thereof, which shall not exceed nineteen, the time and place of holding the first election of directors, the number of shares of capital stock in the new corporation, the amount of each share, which will not be less than one hundred dollars, the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporations, the manner of compensating stockholders in each of said two or more corporations who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporation shall possess all the powers, rights and franchises conferred upon such two or more corporations, and shall be subject to all the restrictions and perform all the duties imposed by the provisions of this act.

54

K.

[EXTRACT FROM SECTION 1, of "An act to provide for the consolidation and extension of railroads in the state of Kansas," approved March 1, 1870. Laws of Kansas of 1870, p. 195.]

Be it enacted by the legislature of the state of Kansas:

SECTION 1. Any two or more railroad companies in this state existing under general or special laws, and owning railroads constructed wholly or in part, which when completed and connected will form a continuous line or lines of railroad, and any railroad company organized as aforesaid, and any railroad company duly organized and

existing under the laws of an adjoining state, whose lines of railroad shall connect at the state line so as to form when completed a continuous line of railroad, are hereby authorized to consolidate and form one company owning and controlling such continuous line or lines of railroad, with all the rights, powers, privileges, and immunities, and subject to all the obligations and liabilities to the state, which belong to or vested upon either of the companies making such consolidation. * * *

L.

[CONCURRENT RESOLUTIONS OF THE KANSAS LEGISLATURE.]

March 17, 1862—Referred to the Committee on Indians Affairs, and ordered to be printed.

CONCURRENT RESOLUTIONS memorializing Congress to pass an act to aid in completing a railroad from the Missouri river to the Pacific ocean.

Resolved by the House of Representatives of the State of Kansas, the Senate concurring therein, That the Congress of the United States be and is hereby urgently requested to pass an act to secure the early completion of a railroad from the Missouri river to the Pacific ocean by way of Fort Riley, as is more fully set forth in bill No. 262, introduced on the fifth day of February, 1862, into the United States house of representatives, by the Hon. J. S. Rollins.

And whereas, The ratification of the treaty lately concluded between the United States and the Pottawatomie Indian nation is indispensable to the construction of said railroad; therefore, be it

Resolved further, That the senate of the United States is urgently requested to ratify said treaty as soon as may be.

Resolved further, That our senators in Congress be instructed and our representatives requested to use every exertion to secure the objects sought in the foregoing resolutions; and be it

Resolved, further, That the governor of the state of Kansas
55 is hereby requested to transmit to our senators and representative in Congress certified copies of the foregoing resolutions, with the request that they immediately lay claim before Congress.

HOUSE OF REPRESENTATIVES, *March* 5, 1862.

The accompanying resolution, No. 14, "Memorializing Congress to pass an act to aid in completing a railroad from the Missouri river to the Pacific ocean," has been adopted by the Senate and House of Representatives.

Final passage, March 4.

Yours respectfully, JOHN FRANCIS,
Chief Clerk.

His Excellency Gov. CHARLES ROBINSON.

I certify the within preamble and resolutions are a correct copy of the original as on file in this office.

HENRY O. SHOLES,
Private Secretary to his Excellency the Governor.

M.

[CERTIFIED EXTRACT FROM THE ROLLINS BILL.]

SECTION 11. *And be it further enacted*, That any other railroad company now incorporated or hereafter to be incorporated may unite with the People's Pacific Railroad Company in constructing their said railroad and telegraph line, or any part thereof, by filing their assent to this act as aforesaid, at any time before the same are constructed, upon such terms as may be equitable, to be agreed upon or determined in the manner hereinafter provided. And when any of the lands granted as aforesaid shall be worthless, other lands may be selected in lieu thereof, under the direction of the secretary of the interior, and as near as may be to the line of said roads; and for five hundred miles of said road most mountainous and difficult of construction—three hundred from the foot of the mountains west of Denver city, and two hundred directly adjoining the state of California—the amount of lands to be granted and bonds to be issued to aid in the construction thereof shall be double the amount per mile hereinbefore provided, and may be called for upon the construction of every twenty-five miles thereof; and between the two last-named sections said company shall be entitled to receive such double amount of lands and three-fourths such double amount of bonds as fast as each twenty-five miles are completed: *Provided*, That no more than fifty thousand of said bonds shall be issued under this act to aid in constructing the said line of railroad and telegraph from Fort Leavenworth to San Francisco.

56 SEC. 15. *And be it further enacted*, That at any time after the passage of this act, all of the railroad companies named therein and assenting thereto, upon an application of any two of them, are authorized to form themselves into one consolidated company, upon such terms as may be just and equitable between them, to be agreed upon or determined as hereinbefore provided. And such consolidated company may thereafter proceed to construct said railroad and telegraph line upon the terms and conditions provided in this act, and in conformity with the charters of said companies in the states of Kansas and California, respectively, so far as the line of said road is situated within said states. The charges and rates of fare upon said railroad shall be fair and reasonable in amount, and shall be uniform, or as nearly so as may be, upon the whole line thereof.

I hereby certify that the foregoing is a full, true, and exact copy of sections eleven and fifteen of the bill, H. R. No. 262, introduced on the 5th of February, 1862, by Hon. J. S. Rollins, entitled "An act to aid in constructing a railroad and telegraph line from the Missouri river to the Pacific ocean," etc.

GREEN ADAMS,

[SEAL.] *Chief Clerk House of Representatives.*

N.

Whereas, Congress at the session of 1861 and 1862 passed an act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, which act was approved July 1, 1862; and, whereas, section nine of said act provided that the Leavenworth, Pawnee & Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line from the Missouri river, at the mouth of the Kansas river, on the south side thereof, so as to connect with the Pacific Railroad of Missouri to a point on the 100th meridian of longitude, between the Platte and Republican rivers; and, whereas, it appears from the debates on the passage of said act that the principal cities and towns in the Kansas valley were to be points in said road; and, whereas, the assignees of the Leavenworth, Pawnee & Western Railroad Company, represented by Samuel Hallett & Co., have not commenced said road on the Missouri river at the mouth of the Kansas, but at a point on the Kansas river above Wyandotte; and, whereas, said company so represented has surveyed and located said road to a point three miles north of Lawrence, the largest city in the Kansas valley, and are surveying said road north of Topeka, the capital of
57 Kansas, and are thus avoiding our cities, towns and business centers, to the great injury of the people of the state as well as the Kansas valley; and, whereas, said company so represented are now demanding that the people of Wyandotte shall pay one hundred thousand dollars to make that city a point in said road; and, whereas, said company so represented are demanding a like sum from the people of Lawrence on condition of being a point in said road; and, whereas, a like sum is demanded from the citizens of Topeka, the capital of our state, to secure it as a point in said road; and, whereas, we have good cause to believe that the same policy will be pursued as the road progresses west, and that the said Samuel Hallett & Co. demand large sums of money and bonds from the people of cities and towns along the route of said road to build this road just where Congress intended it should be built; and this after Congress has placed in the hands of the company means sufficient to build the entire road: therefore,

Resolved 1st, By the House of Representatives, the Senate concurring therein, That Congress be earnestly requested to amend the act above referred to, so as to require the Leavenworth, Pawnee & Western Railroad Company, or their assigns, to make Wyandotte, Lawrence, Topeka, Wabaunsee, Manhattan and Junction City points on said road.

Resolved, 2d, That the President of the United States be respectfully urged to withhold his approval of the location of said road unless Wyandotte, Lawrence, Topeka, Wabaunsee, Manhattan and Junction City are made points in said road: *Provided*, That nothing in this resolution shall be construed or understood to affect the original act of the territory of Kansas, entitled "An act to incorporate the Leavenworth, Pawnee & Western Railroad Company," or to affect

the location of the road commencing in Leavenworth, provided for in said act.

Resolved, 3*d*, That our senators be and are hereby instructed and our representatives requested to use every honorable means to secure the above proposed amendments to said location.

Resolved, 4*th*, That the secretary of state be directed to send an official copy of this preamble and resolutions to each of our senators and representative in Congress, to the President of the United States, also to the president of the senate and speaker of the house of representatives, with a request to present the same to their respective bodies.

Adopted by the house and senate amendments concurred in March 1, 1864.

ALEX. R. BANKS,
Chief Clerk.

Concurred in by the senate on the 18th day of March, A. D. 1864.

JOHN T. MORTON,
Secretary of Senate.

I, R. A. Barker, secretary of state, do hereby certify that the foregoing is a true and correct copy of the original concurrent resolution on file in this office.

[SEAL.] R. A. BARKER,
Secretary of State.

58 O.

WHEREAS, The aid heretofore granted by Congress at the instance of the state for the extension of the Union Pacific Railway Company, eastern division, is sufficient to enable the company to construct said road to its junction with the line from Omaha as rapidly as the interests of the state and the nation require; and whereas the amount of government service performed, and the income of the portion of the road already completed affords a reasonable guarantee that further aid may be safely granted, without the probability of loss to the United States: therefore, be it

1*st*. *Resolved by the House of Representatives of the State of Kansas, the Senate concurring therein*, That the matters aforesaid be respectfully presented to Congress with the urgent request that further aid be granted to the said railway company, upon such terms and conditions as will secure the government against loss and assure the speedy construction of said railway to its junction with the line from Omaha.

2*d*. That our senators in Congress are instructed and our representative requested to use every exertion to secure the object sought in the foregoing resolution.

Adopted by the house of representatives Feb. 1, 1867.

JOHN T. MORTON,
Chief Clerk.

Concurred in by the senate February 9, 1867.

A. R. BANKS,
Secretary.

I, R. A. Barker, secretary of state, do hereby certify that the foregoing is a true and correct copy of the original concurrent resolution on file in this office.

In testimony whereof, I have subscribed my name and affixed the great seal of the state, this 28th day of May, 1868.

[SEAL.] R. A. BARKER,
Secretary of State.

P.

WHEREAS, The extension of the Union Pacific Railway, eastern division, through the territories of New Mexico and Arizona and making a connection by way of Denver city with the northern road from Omaha, is demanded by an enlightened public sentiment, a just regard to population, representation and territory; the speedy, economical and permanent settlement of our Indian difficulties; the rapid development of the richest material regions; the reduction of the large appropriations now necessary to the maintenance of our forts and the efficiency of our military service on the plains; the
59 continuance and preservation of our existing friendly relations with our neighboring sister republic, and the unity and indivisibility of our own people: therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein, That the extension of the eastern division of the Union Pacific Railway to the Pacific coast along the central route, which recent surveys have shown eminently practicable, is alike demanded by the necessity of our national progress, sound public policy, and justice to all parts of the Union, and that to this end the same subsidy in lands and bonds should be granted to this road as has already been given to the line from Omaha.

Resolved, further, That in view of the present subsidy on the line of the "eastern division" expiring upon the completion of some additional fifty miles west of the present termini, that our senators in Congress be instructed and our representatives requested, at the earliest practical period to respectfully and earnestly present this important (especially to the people of Kansas,) subject to the Congress of the United States, so as to procure such legislation as is necessary to the successful prosecution of this great central railway to the Pacific.

Resolved, That certified copies hereof be at once forwarded to each of our senators, to our representative, and to the president of the senate and speaker of the house ef representatives of the Congress of the United States.

Adopted by the senate Jan. 27, 1868.

E. C. MANNING,
Secretary of Senate.

Concurred in by the house of representatives February 7, 1868.

JOHN T. MORTON,
Chief Clerk.

I, R. A. Barker, secretary of state, do hereby certify that the foregoing is a true and correct copy of the original concurrent resolution on file in this office.

In testimony whereof, I have subscribed my name and affixed the great seal of the state, this 28th day of May, 1868.

[SEAL.] R. A. BARKER,
Secretary of State.

Q.

Whereas, by the act of Congress passed July 1st, 1862, providing for the construction of a main line of railroad and telegraph from the 100th meridian of west longitude to the Pacific ocean, with branches to connect therewith from St. Joseph, Wyandotte, and Sioux City, and by the several acts amendatory thereto passed July 2d, 1864, July 3d, 1866, and March 3d, 1869, it is expressly
60 stipulated and provided "that the said main line of road, together with the several branches," shall be required to operate and use the said roads and telegraph for all purposes of communication, travel, and transportation, as far as the public and government are concerned, as one *continuous* line, and in such operations and use to afford and secure to each equal advantages and facilities as to *rates*, *time*, and *transportation*, without any *discrimination* of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others; and whereas, by the act of March 3d, 1869, the Kansas Pacific Railroad, formerly known as the Union Pacific Railway, eastern division, was required to make its connection with the said main line of the Union Pacific Railway at Cheyenne, and was authorized to contract with the Denver Pacific Railway Company to construct and operate that part of the line between Denver and Cheyenne; and as section two (2) of the act above referred to expressly provides and stipulates "that all provisions of law for the operation of the Union Pacific Railroad, its branches and connections, as a continuous line, without discrimination, shall apply the same as if the road from Denver to Cheyenne had been constructed by the said Union Pacific Railway Company, eastern division;" and whereas the said main line "Union Pacific Railway Company," in open violation of the aforementioned acts of Congress, has continuously and persistently refused to recognize the said "Kansas Pacific," formerly Union Pacific Railway Company, eastern division, as one of the branches contemplated in the said acts of Congress, and has by unjust and arbitrary discriminations in the transportation of freight and passengers, prevented this branch of the main line from receiving its legitimate portion of the travel and freight, and by so doing crippling the financial standing and condition and seriously impairing the resources of

the said Kansas Pacific, formerly "Union Pacific Railway, eastern division," compelling them to discriminate against the citizens of the state of Kansas by enhancing the rates of passenger and freight traffic on account of having to support a continuous line of 745 miles of completed railway from the receipts and earnings of about 300 miles of paying road: therefore,

Be it resolved by the senate, the house concurring therein:

SECTION 1. That the Union Pacific Railroad Company, by its continued and persistent violation of law in its refusal to recognize the Kansas Pacific, formerly the Union Pacific Railway, eastern division, as one of the branches contemplated in the original act of July, 1862, and the subsequent amendments thereto, and by its further refusal to grant unto the said Kansas Pacific or Union Pacific Railway, eastern division, all the privileges, immunities, and benefits as provided for, has not only injured the business of that road, but seriously retarded and injured the commercial and agricultural interests
61 of the state of Kansas by compelling said road to advance their rates of transportation of freight and passengers within the state on account of its being cut off from its legitimate portion of through business.

SEC. 2. That we earnestly request the Congress of the United States to take such measures as will at an early day compel the Union Pacific Railway Company to afford the same facilities for the transportation of freight and passengers, both in regard to rate, time, and transportation, as is contemplated by law, without discrimination or injury to the said Kansas Pacific, formerly Union Pacific Railway, eastern division.

SEC. 3. *And be it further resolved*, That our senators be instructed and our members of Congress requested to bring this matter before the Congress of the United States at the earliest practicable moment, and that they urge an immediate investigation into the facts of the case, in order that such unjust discriminations shall cease and the conditions of the law fulfilled.

SEC. 4. The secretary of state is hereby directed to furnish each of our senators and members of Congress with a copy of the foregoing resolutions, and a copy each to the president of the senate of the United States and the speaker of the house of representatives.

I certify that the above and foregoing resolutions passed the senate on February 3d, 1874.

THOS. H. CAVANAUGH,
Secretary.

Concurred in by the house of representatives Feb. 7th, 1874.

BANKS,
Chief Clerk.

STATE OF KANSAS, } ss.
Office of Secretary of State, }

I, James Smith, secretary of state of the state of Kansas, do hereby certify that the foregoing is a true and correct copy of the original resolution on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed my official seal. Done at Topeka, this 16th day of February, A. D. 1881.

[SEAL.] JAMES SMITH,
Secretary of State.

R.

[COPY OF LETTER OF HON. THOS. EWING, then chief justice of Kansas, to the senate committee of Indian affairs, submitting the foregoing laws and resolutions to date of letter.]

WASHINGTON, *June* 14, 1862.

Within are the charters of the Leavenworth, Pawnee & Western Railroad Company of Kansas, together with all the laws of the
62 state now in force applicable to that company, or affecting its rights, duties, or liabilities. They have been compiled by me from the Kansas statutes, and are published at the suggestion of several members of the senate, who wish to examine them when considering the Pacific Railroad bill, now pending in that body, which proposes to intrust the construction of the road through the state of Kansas (except the St. Joseph branch) to this company. All the laws of the state, including those herein presented, can be found in the library of the Supreme Court, the libraries of the several departments, and in the room of the select committee of the senate on the Pacific Railroad, except the laws of 1862, which have as yet been published only in the official newspaper of the state, at Topeka. Copies of the newspaper from which the "act relating to railroad companies" (see p. 17) is taken, will be found in the above-named committee-room.

In connection with these laws are published concurrent resolutions of the legislature of the state of Kansas, which passed both branches with almost entire unanimity, memorializing Congress to pass the Pacific Railroad bill, introduced in the house by Hon. J. S. Rollins, on the 5th February, 1862, being house bill No. 262. That bill proposed to give the construction of the Pacific Railroad through Kansas to the Leavenworth, Pawnee & Western Railroad Company, as provided for in the house bill now pending in the senate. And as the Rollins bill was published by order of the lower branch of the Kansas legislature, and examined and discussed with care, before the concurrent resolutions were adopted, these resolutions may be regarded as a distinct expression of the wish of the people of the state that the construction of the main line through it may be given by Congress to the above-named company.

The original charter (see p. 9) provides for the construction of the road from Leavenworth to the western boundary of the (then) terri-

tory, which was on the summit of the Rocky mountains. If there should be any doubt of the power under that act to build to the northern boundary of the state, there can be none as to the power under the supplemental charter of 1857. (See p. 16.)

The power to build from the main line, as designated in the original charter, to the mouth of the Kansas river, is given in sec. 7, (see p. 9,) because Leavenworth county (in which is and has been the town of Leavenworth) included the mouth of the Kansas river when the charters were granted and the road located through the county. (See p. 21.) A like power is also given in section third of the supplemental charter. (See p. 16.) And under the act of March 5th, 1862, (p. 17,) any railroad company may build branches to any part of the state by consolidation with one of the very numerous companies organized under general or special laws; scarcely any of which, it is true, except the company in question, is in active
63 existence, but their several charters are yet available, as none of them have been declared forfeited. (See p. 17, sec. 1.)

The power to build and operate for public business a line of telegraph is given (p. 19, sec. 2).

The power to mortgage the franchises, as well as other property (p. 19, sec. 6).

In section 7, p. 9, the right of way the company may hold was limited to one hundred feet; but the limitation has been removed, so as to allow it to hold a wider strip by grant (p. 17, sec. 1).

Attention is specially called to the curative statutes. (Sec. 3, p. 19, and sec. 1, p. 17.)

It may be proper to remark that the first section of the "act repealing certain laws" is presented herein (p. 22), not because it has any relation to the subject, but merely to avoid any charge of attempting to conceal its existence. The sixth section of the same act, which is also published herein (p. 22), and the repeated laws and resolutions of the legislatures of the territory and of the state, show that those bodies have always been friendly to this company and had never the disposition to disturb it. Almost all the private corporations in Kansas now in active operation derive their origin and most of their powers from early territorial charters, and have been fostered and encouraged by later territorial and state legislation.

The reason which induced the publication herein of the section of the law last referred to, leads also to the publication of the law of June 4, 1861, (p. 23,) to change the name of the "Leavenworth, Pawnee & Western Railroad Company" to the "Leavenworth, Fort Riley & Western Railroad Company." It is only necessary to remark in regard to this law, that it has never been accepted by the company, directly or by implication. The town of Pawnee having gone out of existence, an attempt was made, but not at the suggestion of the company, to substitute "Fort Riley" for it. It is hardly necessary to say that the charter of the company could not be amended in this any more than in any more important provision, without the assent of the company.

The company was organized in January, 1857, at Leavenworth, by subscription of $156,700 of stock, and the choice by the stockholders of a board of directors and other officers. Since then other subscriptions of stock, within the limits of the charter, have been made, new directors and officers at various times chosen, and the company, pursuant to the provisions of its charter, kept in constant and efficient existence.

The construction of the road was commenced in May, 1857, and in that year surveys and profiles of the main line were made, and the location completed from Leavenworth to Fort Riley, under direction of Mr. Edward L. Berthoud. In November last final estimates and adjustments of the line were commenced by Col. Sylves-
64 ter Medbury, of Columbus, Ohio, an engineer of known ability and experience, and are now being continued from Leavenworth to Fort Riley.

The right of way and depot grounds for nearly that length of the line have been obtained—the right through the reservations of the Delaware Indians having been secured by the 12th article of the treaty of 1854 and the 3d article of the treaty of 1860, and the right through the reservations of the Pottawatomie Indians having been expressly granted by the 5th article of the treaty of 1862; and if the bill now pending should become a law, the company can enter at once and vigorously on the construction of the road.

I have been connected with the company, as stockholder and officer, from its organization to this time, and know the above statements are true.

THOMAS EWING, JR.,
A Director of the L., P. & W. R. R. Company.

65 APPENDIX 2.

Acts of Congress Relating to the Pacific Railroads.

Laws of the United States relating to the Union Pacific Railroad and branches, for the construction of which subsidy bonds have been loaned by the United States to the respective companies owning the same.

A.

Pacific Railroad Acts.

[ACT OF 1862.]

AN ACT to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Walter S. Burgess, William P. Blodgett, Benjamin H. Cheever, Charles Fosdick Fletcher, of Rhode Island; Augustus Brewster, Henry P. Haven, Cornelius S. Bushnell, Henry Hammond, of Connecticut; Isaac Sher-

man, Dean Richmond, Royal Phelps, William H. Ferry, Henry A. Paddock, Lewis J. Stancliff, Charles A. Secor, Samuel R. Campbell, Alfred E. Tilton, John Anderson, Azariah Boody, John S. Kennedy, H. Carver, Joseph Field, Benjamin F. Camp, Orville W. Childs, Alexander J. Bergen, Ben Holliday, D. N. Barney, S. De Witt Bloodgood, William H. Grant, Thos. W. Olcott, Samuel B. Ruggles, James B. Wilson, of New York; Ephraim Marsh, Charles M. Harker, of New Jersey; John Edgar Thompson, Benjamin Haywood, Joseph H. Scranton, Joseph Harrison, George W. Cass, John H. Bryant, Daniel J. Morrell, Thomas M. Howe, William F. Johnson, Robert Finney, John A. Green, E. R. Myre, Charles F. Wells, jr., of Pennsylvania; Noah L. Wilson, Amasa Stone, William H. Clement, S. S. L'Hommedieu, John Brough, William Dennison, Jacob Blickensderfer, of Ohio; William M. McPherson, R. W. Wells, Willard P. Hall, Armstrong Beatty, John Corby, of Missouri; S. J. Hensley, Peter Donahue, C. P. Huntington, T. D. Judah, James Bailey, James T. Ryan, Charles Hosmer, Charles Marsh, D. O. Mills, Samuel Bell, Louis McLane, George W. Mowe, Charles McLaughlin, Timothy Dame, John R. Robinson, of California; John Atchinson and John D. Winters, of the territory of Nevada; John D. Campbell, R. N. Rice, Charles A. Trowbridge, and Ransom Gardner, Charles W. Penny, Charles T. Gorham, William McConnell, of Michigan; William F. Coolbaugh, Lucius H. Langworthy, Hugh T. Reid, Hoyt Sherman, Lyman Cook, Samuel Q. Curtis, Lewis A. Thomas, Platt Smith, of Iowa; William B. Ogden, Charles G. Hammond, Henry Farnum, Amos C. Babcock, W. Seldon Gale, Nehemiah Bushnell, and Lorenzo Bull, of Illinois; William H. Swift, Samuel T. Dana, John Bertram, Franklin S. Stevens, Edward R. Tinker, of Massachusetts; Franklin Gorin, Laban J. Bradford, and John T. Levis, of Kentucky; James Dunning, John M. Wood, Edwin Noyes, Joseph Eaton, of Maine; Henry H. Baxter, George W. Collamer, Henry Keys, Thomas A. Canfield, of Vermont; William S. Ladd, A. M. Berry, Benjamin F. Harding, of Oregon; William Bunn, jr., John Catlin, Levi Sterling, John Thompson, Elihu L. Phillips, Walter D. McIndoe, T. B. Stoddard, E. H. Brodhead, A. H. Virgin, of Wisconsin; Charles Paine, Thomas A. Morris, David C. Branham, Samuel Hanna, John Votaw, Jesse L. Williams, Isaac C. Elston, of Indiana; Thomas Swan, Chauncy Crooks, Edward Wilkins, of Maryland; Francis R. E. Cornell, David Blakely, A. D. Seward, Henry A. Swift, Dwight Woodbury, John McKusick, John R. Jones, of Minnesota; Joseph A. Gilmore, Charles W. Woodman, of New Hampshire; W. H. Grimes, J. C. Stone, Chester Thomas, John Kerr, Werter R. Davis, Luther C. Challis, Josiah Miller, of Kansas; Gilbert C. Monell and Augustus Kountz, T. M. Marquette, William H. Taylor, Alvin Saunders, of Nebraska; John Evans, of Colorado; together with five commissioners to be appointed by the secretary of the interior, and all persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic in

deed and in law, by the name, style, and title of "The Union Pacific Railroad Company;" and by that name shall have perpetual succession, and shall be able to sue and to be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and have a common seal; and the said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph, with the appurtenances, from a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican river and the north margin of the valley of the Platte river, in the territory of Nebraska, to the western boundary of Nevada territory, upon the route and terms hereinafter provided, and is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the purposes of this act as herein set forth. The capital
67 stock of said company shall consist of one hundred thousand shares of one thousand dollars each, which shall be subscribed for and held in not more than two hundred shares by any one person, and shall be transferable in such manner as the by-laws of said corporation shall provide. The persons hereinbefore named, together with those to be appointed by the secretary of the interior, are hereby constituted and appointed commissioners, and such body shall be called the board of commissioners of the Union Pacific Railroad and Telegraph Company, and twenty-five shall constitute a quorum for the transaction of business. The first meeting of said board shall be held at Chicago, at such time as the commissioners from Illinois herein named shall appoint, not more than three nor less than one month after the passage of this act, notice of which shall be given by them to the other commissioners by depositing a call thereof in the postoffice at Chicago, post paid, to their address, at least forty days before said meeting, and also by publishing said notice in one daily newspaper in each of the cities of Chicago and Saint Louis. Said board shall organize by the choice from its number of a president, secretary, and treasurer, and they shall require from said treasurer such bonds as may be deemed proper, and may from time to time increase the amount thereof as they may deem proper. It shall be the duty of said board of commissioners to open books, or cause books to be opened, at such times and in such principal cities in the United States as they or a quorum of them shall determine, to receive subscriptions to the capital stock of said corporation, and a cash payment of ten per centum on all subscriptions, and to receipt therefor. So soon as two thousand shares shall be in good faith subscribed for, and ten dollars per share actually paid into the treasury of the company, the said president and secretary of said board of commissioners shall appoint a time and place for the first meeting of the subscribers to the stock of said company, and shall give notice thereof in at least one newspaper in each state in which subscription books have been opened, at least thirty days previous to the day of meeting, and such subscribers as shall attend the meeting

so called, either in person or by proxy, shall then and there elect by ballot not less than thirteen directors for said coporation; and in such election each share of said capital shall entitle the owner thereof to one vote. The president and secretary of the board of commissioners shall act as inspectors of said election, and shall certify under their hands the names of the directors elected at said meeting; and the said commissioners, treasurer, and secretary shall then deliver over to said directors all the properties, subscription books and other books in their possession, and thereupon the duties of said commissioners and the officers previously appointed by them shall cease and determine forever, and thereafter the stockholders shall constitute said body politic and corporate. At the time of the first and
68 each triennial election of directors by the stockholders two additional directors shall be appointed by the President of the United States, who shall act with the body of directors, and to be denominated directors on the part of the government; any vacancy happening in the government directors at any time may be filled by the President of the United States. The directors to be appointed by the President shall not be stockholders in the Union Pacific Railroad Company. The directors so chosen shall, as soon as may be after their election, elect from their own number a president and vice-president, and shall also elect a treasurer and secretary. No person shall be a director in said company unless he shall be a bona fide owner of at least five shares of stock in said company, except the two directors to be appointed by the President as aforesaid. Said company, at any regular meeting of the stockholders called for that purpose, shall have power to make by-laws, rules, and regulations as they shall deem needful and proper, touching the disposition of the stock, property, estate, and effects of the company, not inconsistent herewith, the transfer of shares, the term of office, duties, and conduct of their officers and servants, and all matters whatsoever which may appertain to the concerns of said company; and the said board of directors shall have power to appoint such engineers, agents, and subordinates as may from time to time be necessary to carry into effect the object of this act, and to do all acts and things touching the location and construction of said road and telegraph. Said directors may require payment of subscriptions to the capital stock, after due notice, at such times and in such proportions as they shall deem necessary to complete the railroad and telegraph within the time in this act prescribed. Said president, vice-president, and directors shall hold their office for three years, and until their successors are duly elected and qualified, or for such less time as the by-laws of the corporation may prescribe; and a majority of said directors shall constitute a quorum for the transaction of business. The secretary and treasurer shall give such bonds, with such security, as the said board shall from time to time require, and shall hold their offices at the will and pleasure of the directors. Annual meetings of the stockholders of the said corporation, for the choice of officers (when they are to be chosen) and for the transaction of annual business, shall be holden

at such time and place and upon such notice as may be prescribed in the by-laws.

SEC. 2. *And be it further enacted*, That the right of way through the public lands be, and the same is hereby, granted to said company for the construction of said railroad and telegraph line; and the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof; said right of way is granted to said railroad to the extent of two hundred feet in width on each side of said
69 railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, and depots, machine shops, switches, side tracks, turntables, and water stations. The United States shall extinguish as rapidly as may be the Indian titles to all lands falling under the operation of this act and required for the said right of way and grants hereinafter made.

SEC. 3. *And be it further enacted*, That there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of *five* alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of *ten* miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a preëmption or homestead claim may not have attached, at the time the line of said road is definitely fixed: *Provided*, That all *mineral lands* shall be excepted from the operation of this act; but where the same shall contain timber, the timber thereon is hereby granted to said company. And all such lands, so granted by this section, which shall not be sold or disposed of by said company within three years after the entire road shall have been completed, shall be subject to settlement and preëmption, like other lands, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company.

SEC. 4. *And be it further enacted*, That whenever said company shall have completed forty consecutive miles of any portion of said railroad and telegraph line, ready for the service contemplated by this act, and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, equipments, furniture, and all other appurtenances of a first-class railroad, the rails and all the other iron used in the construction and equipment of said road to be American manufacture of the best quality, the President of the United States shall appoint three commissioners to examine the same and report to him in relation thereto; and if it shall appear to him that forty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company, on each side of the road as far as the same

is completed, to the amount aforesaid; and patents shall in like manner issue as each forty miles of said railroad and telegraph line are completed, upon certificate of said commissioners. Any vacancies occurring in said board of commissioners by death, resignation, or otherwise, shall be filled by the President of the United States: *Provided, however*, That no such commissioners shall be appointed by the President of the United States unless there shall be presented to him a statement, verified on oath by the president of said company, that such forty miles have been completed, in the manner required by this act, and setting forth with certainty the points where such forty miles begin and where the same end; which oath shall be taken before a judge of a court of record.

SEC. 5. *And be it further enacted*, That for the purposes herein mentioned, the secretary of the treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest, (said interest payable semi-annually,) which interest may be paid in United States treasury notes or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of forty miles; and to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds may be issued; and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the secretary of the treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the secretary of the treasury, for the use and benefit of the United States: *Provided*, This section shall not apply to that part of any road now constructed.

SEC. 6. *And be it further enacted*, That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the government, whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid, (at fair and reasonable rates of compensation, not

to exceed the amounts paid by private parties for the same kind of service;) and all compensation for services rendered for the government shall be applied to the payment of said bonds and in-
71 terest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, treasury notes, or other evidences of debt against the United States, to be allowed at par; and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof.

SEC. 7. *And be it further enacted*, That said company shall file their assent to this act, under the seal of said company, in the department of the interior, within one year after the passage of this act, and shall complete said railroad and telegraph from the point of beginning as herein provided, to the western boundary of Nevada territory before the first day of July, one thousand eight hundred and seventy-four: *Provided*, That within two years after the passage of this act said company shall designate the general route of said road, as near as may be, and shall file a map of the same in the department of the interior, whereupon the secretary of the interior shall cause the lands within fifteen miles of said designated route or routes to be withdrawn from preëmption, private entry, and sale; and when any portion of said route shall be finally located, the secretary of the interior shall cause the said lands hereinbefore granted to be surveyed and set off as fast as may be necessary for the purposes herein named: *Provided*, That in fixing the point of connection of the main trunk with the eastern connections it shall be fixed at the most practicable point for the construction of the Iowa and Missouri branches, as hereinafter provided.

SEC. 8. *And be it further enacted*, That the line of said railroad and telegraph shall commence at a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican river and the north margin of the valley of the Platte river, in the territory of Nebraska, at a point to be fixed by the President of the United States, after actual surveys; thence running westerly upon the most direct, central and practicable route through the territories of the United States to the western boundary of the territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad Company of California.

SEC. 9. *And be it further enacted*, That the Leavenworth, Pawnee & Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line from the Missouri river, at the mouth of the Kansas river, on the south side thereof, so as to connect with the Pacific Railroad of Missouri, to the aforesaid point on the one hundredth meridian of longitude west from Greenwich, as herein provided, upon the same terms and conditions in all respects as are provided in this act for the construction of the railroad and telegraph line first mentioned, and to meet and connect with the

same at the meridian of longitude aforesaid; and in case the general route or line of road from the Missouri river to the
72 Rocky mountains should be so located as to require a departure northwardly from the proposed line of said Kansas railroad before it reaches the meridian of longitude aforesaid, the location of said Kansas road shall be made so as to conform thereto; and said railroad through Kansas shall be so located between the mouth of the Kansas river, as aforesaid, and the aforesaid point on the one hundredth meridian of longitude, that the several railroads from Missouri and Iowa, herein authorized to connect with the same, can make connection within the limits prescribed in this act, provided the same can be done without deviating from the general direction of the whole line to the Pacific coast. The route in Kansas west of the meridian of Fort Riley, to the aforesaid point on the one hundredth meridian of longitude, to be subject to the approval of the President of the United States, and to be determined by him on actual survey. And said Kansas company may proceed to build said railroad to the aforesaid point, on the one hundredth meridian of longitude west from Greenwich, in the territory of Nebraska. The Central Pacific Railroad Company of California, a corporation existing under the laws of the state of California, are hereby authorized to construct a railroad and telegraph line from the Pacific coast, at or near San Francisco, or the navigable waters of the Sacramento river, to the eastern boundary of California, upon the same terms and conditions, in all respects, as are contained in this act for the construction of said railroad and telegraph line first mentioned, and to meet and connect with the first mentioned railroad and telegraph line on the eastern boundary of California. Each of said companies shall file their acceptance of the conditions of this act in the department of the interior within six months after the passage of this act.

SEC. 10. *And be it further enacted*, That the said company chartered by the state of Kansas shall complete one hundred miles of their said road, commencing at the mouth of the Kansas river as aforesaid, within two years after filing their assent to the conditions of this act, as herein provided, and one hundred miles per year thereafter until the whole is completed; and the said Central Pacific Railroad Company of California shall complete fifty miles of their said road within two years after filing their assent to the provisions of this act, as herein provided, and fifty miles per year thereafter until the whole is completed; and after completing their roads, respectively, said companies, or either of them, may unite upon equal terms with the first-named company in constructing so much of said railroad and telegraph line, and branch railroads and telegraph lines in this act hereafter mentioned, through the territories from the state of California to the Missouri river, as shall then remain to be constructed, on the same terms and conditions as provided in this act in relation to the said Union Pacific Railroad Company. And the Hannibal & St. Joseph Railroad, the Pacific Railroad Company of
73 Missouri, and the first-named company, or either of them, on filing their assent to this act, as aforesaid, may unite upon

equal terms, under this act, with the said Kansas company, in constructing said railroad and telegraph to said meridian of longitude, with the consent of the said state of Kansas; and in case said first-named company shall complete their line to the eastern boundary of California before it is completed across said state by the Central Pacific Railroad Company of California, said first-named company is hereby authorized to continue in constructing the same through California, with the consent of said state, upon the terms mentioned in this act, until said roads shall meet and connect, and the whole line of said railroad and telegraph is completed; and the Central Pacific Railroad Company of California, after completing its road across said state, is authorized to continue the construction of said railroad and telegraph through the territories of the United States* to the Missouri river, including the branch roads specified in this act, upon the routes hereinbefore mentioned and hereinafter indicated, on the terms and conditions provided in this act in relation to the said Union Pacific Railroad Company, until said roads shall meet and connect, and the whole line of said railroad and branches and telegraph is completed.

SEC. 11. *And be it further enacted*, That for three hundred miles of said road most mountainous and difficult of construction, to wit, one hundred and fifty miles westwardly from the eastern base of the Rocky mountains, and one hundred and fifty miles eastwardly from the western base of the Sierra Nevada mountains, said points to be fixed by the President of the United States, the bonds to be issued to aid in the construction thereof shall be treble the number per mile hereinbefore provided, and the same shall be issued, and the lands herein granted be set apart, upon the construction of every twenty miles thereof, upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed; and between the sections last named of one hundred and fifty miles each, the bonds to be issued to aid in the construction thereof shall be double the number per mile first mentioned, and the same shall be issued, and the lands herein granted be set apart, upon the construction of every twenty miles thereof, upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed: *Provided*, That no more than fifty thousand of said bonds shall be issued under this act to aid in constructing the main line of said railroad and telegraph.

SEC. 12. *And be it further enacted*, That whenever the route of said railroad shall cross the boundary of any state or territory, or said meridian of longitude, the two companies meeting or uniting there shall agree upon its location at that point, with reference to
74 the most direct and practicable through route, and in case of difference between them as to said location the President of the United States shall determine the said location, the companies named in each state and territory to locate the road across the same between the points so agreed upon, except as herein provided. The

* See section 6, act July 2, 1864. The words "and states intervening" inserted.

track upon the entire line of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that, when completed, cars can be run from the Missouri river to the Pacific coast; the grades and curves shall not exceed the maximum grades and curves of the Baltimore & Ohio railroad; the whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and government are concerned, as one connected, continuous line; and the companies herein named in Missouri, Kansas and California, filing their assent to the provisions of this act, shall receive and transport all iron rails, chairs, spikes, ties, timber, and all materials required for constructing and furnishing said first-mentioned line between the aforesaid point, on the one hundredth meridian of longitude and western boundary of Nevada territory, whenever the same is required by said first-named company, at cost, over that portion of the roads of said companies constructed under the provisions of this act.

SEC. 13. *And be it further enacted*, That the Hannibal & Saint Joseph Railroad Company of Missouri may extend its roads from Saint Joseph, *via* Atchison, to connect and unite with the road through Kansas, upon filing its assent to the provisions of this act, upon the same terms and conditions in all respects, for one hundred miles in length next to the Missouri river, as are provided in this act for the construction of the railroad and telegraph line first mentioned, and may for this purpose use any railroad charter which has been or may be granted by the legislature of Kansas: *Provided*, That if actual survey shall render it desirable, the said company may construct their road, with the consent of the Kansas legislature, on the most direct and practicable route west from Saint Joseph, Missouri, so as to connect and unite with the road leading from the western boundary of Iowa at any point east of the one hundredth meridian of west longitude, or with the main trunk road at said point; but in no event shall lands or bonds be given to said company, as herein directed, to aid in the construction of their said road for a greater distance than one hundred miles. And the Leavenworth, Pawnee & Western Railroad Company of Kansas may construct their road from Leavenworth to unite with the road through Kansas.

SEC. 14. *And be it further enacted*, That the said Union Pacific Railroad Company is hereby authorized and required to construct a single line of railroad and telegraph from a point on the western boundary of the state of Iowa, to be fixed by the President of the United States, upon the most direct and practicable route, to be subject to his approval, so as to form a connection with the lines of said company at some point on the one hundredth meridian of longitude aforesaid, from the point of commencement on the western boundary of the state of Iowa, upon the same terms and conditions, in all respects, as are contained in this act for the construction of the said railroad and telegraph first mentioned; and

the said Union Pacific Railroad Company shall complete one hundred miles of the road and telegraph in this section provided for, in two years after filing their assent to the conditions of this act, as by the terms of this act required, and at the rate of one hundred miles per year thereafter, until the whole is completed: *Provided*, That a failure upon the part of said company to make said connection in the time aforesaid, and to perform the obligations imposed on said company by this section, and to operate said road in the same manner as the main line shall be operated, shall forfeit to the government of the United States all the rights, privileges, and franchises granted to and conferred upon said company by this act. And whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific Railroad Company is hereby authorized and required to construct a railroad and telegraph from said Sioux City upon the most direct and practicable route to a point on, and so as to connect with, the branch railroad and telegraph in this section hereinbefore mentioned, or with the said Union Pacific Railroad, said point of junction to be fixed by the President of the United States, not further west than the one hundredth meridian of longitude aforesaid, and on the same terms and conditions as provided in this act for the construction of the Union Pacific Railroad as aforesaid, and to complete the same at the rate of one hundred miles per year; and should said company fail to comply with the requirements of this act in relation to the said Sioux City railroad and telegraph, the said company shall suffer the same forfeiture as prescribed in relation to the Iowa branch railroad and telegraph hereinbefore mentioned.

SEC. 15. *And be it further enacted*, That any other railroad company now incorporated or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon just such and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto.

SEC. 16. *And be it further enacted*, That at any time after the passage of this act, all of the railroad companies named herein, and assenting thereto, or any two or more of them, are authorized to form themselves into one consolidated company; notice of such consolidation, in writing, shall be filed in the department of the
76 interior, and such consolidated company shall thereafter proceed to construct said railroad and branches, and telegraph line, upon the terms and conditions provided in this act.

SEC. 17. *And be it further enacted*, That in case said company or companies shall fail to comply with the terms and conditions of this act, by not completing said road and telegraph and branches within a reasonable time, or by not keeping the same in repair and use, but shall permit the same, for an unreasonable time, to remain unfinished, or out of repair, and unfit for use, Congress may pass any act to in-

sure the speedy completion of said road and branches, or put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the use of the United States, to pay all such expenditures caused by the default and neglect of such company or companies: *Provided*, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri river to the navigable waters of the Sacramento river, in California, by the first day of July, eighteen hundred and seventy-six, the whole of all said railroads before mentioned and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling stock, machine shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States: *Provided*, That of the bonds of the United States in this act provided to be delivered for any and all parts of the roads to be constructed east of the one hundredth meridian of west longitude from Greenwich, and for any part of the road west of the west foot of the Sierra Nevada mountain[s,] there shall be reserved of each part and instalment twenty-five per centum, to be and remain in the United States treasury, undelivered, until said road and all parts thereof provided for in this act are entirely completed; and of all the bonds provided to be delivered for the said road, between the two points aforesaid, there shall be reserved out of each instalment fifteen per centum, to be and remain in the treasury until the whole of the road provided for in this act is fully completed; and if the said road or any part thereof shall fail of completion at the time limited therefor in this act, then and in that case the said part of said bonds so reserved shall be forfeited to the United States.

SEC. 18. *And be it further enacted*, That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs, and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost, exclusive of the five per centum to be paid to the United States, Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law. And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the
77 construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act.

SEC. 19. *And be it further enacted*, That the several railroad companies herein named are authorized to enter into an arrangement with the Pacific Telegraph Company, the Overland Telegraph Company, and the California State Telegraph Company, so that the present line of telegraph between the Missouri river and San Francisco

may be moved upon or along the line of said railroad and branches as fast as said roads and branches are built; and if said arrangement be entered into, and the transfer of said telegraph line be made in accordance therewith, to the line of said railroad and branches, such transfer shall, for all purposes of this act, be held and considered a fulfillment on the part of said railroad companies of the provisions of this act in regard to the construction of said line of telegraph. And in case of disagreement said telegraph companies are authorized to remove their line of telegraph along and upon the line of railroad herein contemplated, without prejudice to the rights of said railroad companies named herein.

SEC. 20. *And be it further enacted*, That the corporation hereby created and the roads connected therewith, under the provisions of this act, shall make to the secretary of the treasury an annual report, wherein shall be set forth—

First. The names of the stockholders and their places of residence so far as the same can be ascertained;

Second. The names and residences of the directors and all other officers of the company;

Third. The amount of stock subscribed, and the amount thereof actually paid in;

Fourth. A description of the lines of road surveyed, of the lines thereof fixed upon for the construction of the road, and the cost of such survey;

Fifth. The amount received from passengers on the road;

Sixth. The amount received from freight thereon;

Seventh. A statement of the expense of said road and its fixtures;

Eighth. A statement of the indebtedness of said company, setting forth the various kinds thereof. Which report shall be sworn to by the president of the said company, and shall be presented to the secretary of the treasury on or before the first day of July in each year.

Approved July 1, 1862.

78 B.

[AMENDMENT OF JULY 2, 1864.]

AN ACT to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July 1, 1862.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the capital stock of the company entitled the Union Pacific Railroad Company, authorized by the act of which this act is amendatory, shall be in shares of one hundred dollars, instead of one thousand dollars each; that the number of shares shall be one million, instead of one hundred thousand, and that the number of shares which any person shall hold to entitle him to serve as a director in said company (except the five directors to be appointed by the government) shall be fifty shares, instead of five shares; and that every subscriber to said capital stock for each

share of one thousand dollars heretofore subscribed, shall be entitled to a certificate for ten shares for one hundred dollars each; and that the following words in section first of said act—"which shall be subscribed for and held in not more than two hundred shares by any one person"—be, and the same are hereby, repealed.

SEC. 2. *And be it further enacted*, That the Union Pacific Railroad Company shall cause books to be kept open to receive subscriptions to the capital stock of said company (until the entire capital of one hundred millions of dollars shall be subscribed) at the general office of said company in the city of New York, and in each of the cities of Boston, Philadelphia, Baltimore, Chicago, Cincinnati, and Saint Louis, at such places as may be designated by the President of the United States, and in such other localities as may be directed by him. No subscription for said stock shall be deemed valid unless the subscriber therefor shall, at the time of subscribing, pay or remit to the treasurer of the company an amount per share subscribed by him equal to the amount per share previously paid by the then existing stockholders. The said company shall make assessments upon its stockholders of not less than five dollars per share, and at intervals of not exceeding six months from and after the passage of this act, until the par value of all shares subscribed shall be fully paid; and money only shall be receivable for any such assessment, or as equivalents for any portion of the capital stock hereinbefore authorized. The capital stock of said company shall not be increased beyond the actual cost of said road. And the stock of the company shall be deemed personal property, and shall be transferable on the books of the company at the general office of said company in the city of New York, or at such other transfer office as the company may establish.

79 SEC. 3. *And be it further enacted*, That the Union Pacific R. R. Company, and all other companies provided for in this act and the act to which this is an amendment, be, and hereby are, empowered to enter upon, purchase, take, and hold any lands or premises that may be necessary and proper for the construction and working of said road, not exceeding in width one hundred feet on each side of its center line, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for turnouts, standing places for cars, depots, station-house[s], or any other structures required in the construction and operating of said road. And each of said companies shall have the right to cut and remove trees or other materials that might by falling encumber its road-bed, though standing or being more than one hundred feet therefrom. And in case the owner or claimant of such lands or premises and such company cannot agree as to the damages, the amount shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by any party to any judge of a court of record in any of the territories in which the lands or premises to be taken lie; and said commissioners, in their assessments of damages, shall appraise such premises at what would have been the value thereof if

the road had not been built; and upon return into court of such appraisement, and upon the payment to the clerk thereof of the amount so awarded by the commissioners for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said company, which shall thereby acquire full title to the same for the purposes aforesaid. And either party feeling aggrieved by said assessment may, within thirty days, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said company to enter upon the premises taken, or to do any act necessary in the construction of its road. And said party appealing shall give bonds with sufficient surety or sureties for the payment of any costs that may arise upon such appeal. And in case the party appealing does not obtain a more favorable verdict, such party shall pay the whole cost incurred by the appellee, as well as its own. And the payment into court for the use of the owner or claimant, of a sum equal to that finally awarded shall be held to vest in said company the title of said land, and the right to use and occupy the same for the construction, maintaining and operating of the road of said company. And in case any of the lands to be taken as aforesaid shall be held by any person residing without the territory, or subject to any legal disability, the court may appoint a proper person who shall give bonds with sufficient surety or sureties for the faithful execution of his trust, and who may represent in court the person disqualified or absent as aforesaid, when the same proceedings shall be had in reference to the appraisement of the premises to be taken, and with the same effect as have been already described. And the title of the company to the land taken by virtue of this act shall not be affected nor impaired by reason of any failure by any guardian to discharge faithfully his trust. And in case it shall be necessary for either of the said companies to enter upon lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purpose of its said railroad, and may institute proceedings in manner described for the purpose of ascertaining the value of, and acquiring a title to, the same; and the court may determine the kind of notice to be served on such owner or owners, and may in its discretion appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or non-appearance. But in case no claimant shall appear within six years from the time of the opening of said road across any land, all claim to damages against said company shall be barred. It shall be competent for the legal guardian of any infant, or any other person under guardianship, to agree with the proper company as to damages sustained by reason of the taking of any lands of any such person under disability, as aforesaid, for the use as aforesaid; and upon such agreement being made, and approved by the court having supervision of the official acts of said guardian, the said guardian shall have full power to make and execute a conveyance

thereof to the said company, which shall vest the title thereto in the said company.

SEC. 4. *And be it further enacted*, That section three of said act be hereby amended by striking out the word "five," where the same occurs in said section, and by inserting in lieu thereof the word "ten;" and by striking out the word "ten," where the same occurs in said section, and by inserting in lieu thereof the word "twenty." And section seven of said act is hereby amended by striking out the word "fifteen," where the same occurs in said section, and inserting in lien thereof the word "twenty-five." And the term "mineral land," wherever the same occurs in this act, and the act to which this is an amendment, shall not be construed to include coal and iron land. And any lands granted by this act, or the act to which this is an amendment, shall not defeat or impair any pre-emption, homestead, swamp land, or other lawful claim, nor include any government reservation or mineral lands, or the improvements of any bona fide settler, or any lands returned and denominated as mineral lands, and the timber necessary to support his said improvements as a miner or agriculturist, to be ascertained under such rules as have been or may be established by the commissioners of the general land office, in conformity with the provisions of the pre-emption laws: *Provided*, That the quantity thus exempted by the operation of this act, and the act to which this act is an amendment, shall not exceed one hundred and sixty acres for each settler also claims as an agriculturist, and such quantity for each settler who claims as a
81 miner, as the said commissioner may establish by general regulations: *Provided, also*, That the phrase, "but where the same shall contain timber, the timber thereon is hereby granted to said company," in the proviso to said section three, shall not apply to the timber growing or being on any land farther than ten miles from the center line of any one of said roads or branches mentioned in said act, or in this act. And all lands shall be excluded from the operation of this act, and of the act to which this act is an amendment, which were located, or selected to be located, under the provisions of an act entitled "An act donating lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July second, eighteen hundred and sixty-two, and notice thereon given at the proper land office.

SEC. 5. *And be it further enacted*, That the time for designating the general route of said railroad, and of filing the map of the same, and the time for the completion of that part of the railroads required by the terms of said act of each company, be, and the same is hereby, extended one year from the time in said act designated; and that the Central Pacific Railroad Company of California shall be required to complete twenty-five miles of their said road in each year thereafter, and the whole to the state line within four years, and that only one-half of the compensation for services rendered for the government by said companies shall be required to be applied to the

payment of the bonds issued by the government in aid of the construction of said roads.

SEC. 6. *And be it further enacted*, That the proviso to section four of said act is hereby modified as follows, viz.: And the President of the United States is hereby authorized, at any time after the passage of this act, to appoint for each and every of said roads three commissioners, as provided for in the act to which this is amendatory; and the verified statement of the president of the California company, required by said section four, shall be filed in the office of the United States surveyor general for the state of California, instead of being presented to the President of the United States; and the said surveyor general shall thereupon notify the said commissioners of the filing of such statement, and the said commissioners shall thereupon proceed to examine the portion of said railroad and telegraph line so completed, and make their report thereon to the President of the United States, as provided by the act of which this is amendatory. And such statement may be filed, and such railroad and telegraph line be examined and reported on by the said commissioners, and the requisite amount of bonds may be issued and the lands appertaining thereto may be set apart, located, entered, and patented, as provided in this act and the act to which this is amendatory, upon the construction by said railroad company of California of any portion of not less than twenty consecutive miles of their said
82 railroad and telegraph line, upon the certificate of said commissioners that such portion is completed as required by the act to which this is amendatory. And section ten of the act of which this is amendatory is hereby amended by inserting after the words "United States," in the last clause, the words "and states intervening."

SEC. 7. *And be it further enacted*, That so much of section seventeen of said act as provides for a reservation by the government of a portion of the bonds to be issued to aid in the construction of the said railroads, is hereby repealed. And the failure of any one company to comply fully with the conditions and requirements of this act, and the act to which this is amendatory, shall not work a forfeiture of the rights, privileges, or franchise of any other company or companies that shall have complied with the same.

SEC. 8. *And be it further enacted*, That for the purpose of facilitating the work on said railroad, and of enabling the said company as early as practicable to commence the grading of said railroad in the region of the mountains between the eastern base of the Rocky mountains and the western base of the Sierra Nevada mountains, so that the same may be finally completed within the time required by law, it is hereby provided that whenever the chief engineeer of the said company, and said commissioners, shall certify that a certain proportion of the work required to prepare the road for the superstructure on any such section of twenty miles is done, (which said certificate shall be duly verified,) the secretary of the treasury is hereby authorized and required, upon the delivery of such certificate, to

issue to said company a proportion of said bonds, not exceeding two-thirds of the amount of bonds authorized to be issued under the provisions of the act, to aid in the construction of such section of twenty miles, nor in any case exceeding two-thirds of the value of the work done, the remaining one-third to remain until the said section is fully completed and certified by the commissioners appointed by the President, according to the terms and provisions of the said act; and no such bonds shall issue to the Union Pacific Railroad Company for work done west of Salt Lake City under this section, more than three hundred miles in advance of the completed continuous line of said railroad from the point of beginning on the one hundredth meridian of longitude.

SEC. 9. *And be it further enacted*, That to enable any one of said corporations to make convenient and necessary connections with other roads, it is hereby authorized to establish and maintain all necessary ferries upon and across the Missouri river and other rivers which its road may pass in its course; and authority is hereby given said corporation to construct bridges over said Missouri river and all other rivers for the convenience of said road: *Provided*, That any bridge or bridges it may construct over the Missouri river, or any other navigable river on the line of said road, shall be constructed with suitable and proper draws
83 for the passage of steamboats, and shall be built, kept, and maintained at the expense of said company in such manner as not to impair the usefulness of said rivers for navigation to any greater extent than such structures of the most approved character necessarily do: *And provided further*, That any company authorized by this act to construct its road and telegraph line from the Missouri river to the initial point aforesaid, may construct its road and telegraph line so as to connect with the Union Pacific Railroad at any point westwardly of such initial point, in case such company shall deem such westward connection more practicable or desirable; and in aid of the construction of so much of its road and telegraph line as shall be a departure from the route hereinbefore provided for its road, such company shall be entitled to all the benefits, and be subject to all the conditions and restrictions of this act: *Provided further, however*, That the bonds of the United States shall not be issued to such company for a greater amount than is hereinbefore provided, if the same had united with the Union Pacific Railroad on the 100th degree of longitude; nor shall such company be entitled to receive any greater amount of alternate sections of public lands than are also herein provided.

SEC. 10. *And be it further enacted*, That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company, and any other company authorized to participate in the construction of said road, may, on the completion of each section of said road, as provided in this act and the act to which this act is an amendment, issue their first-mortgage bonds on their respective railroad and telegraph lines to an amount

not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property, and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies and public stores for the government of the United States. And the said section is further amended by striking out the word "forty," and inserting in lieu thereof the words "on each and every section of not less than twenty."

SEC. 11. *And be it further enacted*, That if any of the railroad companies entitled to bonds of the United States, or to issue their first-mortgage bonds herein provided for, has, at the time of the approval of this act, issued, or shall thereafter issue, any of its own bonds or securities in such form or manner as in law or equity to entitle the same to priority or preference of payment to the said
84 guaranteed bonds, or said first-mortgage bonds, the amount of such corporate bonds outstanding and unsatisfied, or uncanceled, shall be deducted from the amount of such government and first-mortgage bonds which the company may be entitled to receive and issue; and such an amount only of such government bonds and such first-mortgage bonds shall be granted or permitted, as added to such outstanding, unsatisfied, or uncanceled bonds of the company shall make up the whole amount per mile to which the company would otherwise have been entitled: *And provided further*, That before any bonds shall be so given by the United States, the company claiming them shall present to the secretary of the treasury an affidavit of the president and secretary of the company, to be sworn to before the judge of a court of record, setting forth whether said company has issued any such bonds or securities, and, if so, particularly describing the same, and such other evidence as the secretary may require, so as to enable him to make the deduction herein required; and such affidavit shall then be filed and deposited in the office of the secretary of the interior. And any person swearing falsely to any such affidavit, shall be deemed guilty of perjury, and on conviction thereof shall be punished as aforesaid: *Provided also*, That no land granted by this act shall be conveyed to any party or parties, and no bonds shall be issued to any company or companies, party or parties, on account of any road or part thereof, made prior to the passage of the act to which this act is an amendment, or made subsequent thereto under the provisions of any act or acts other than this act, and the act amended by this act.

SEC. 12. *And be it further enacted*, That the Leavenworth, Pawnee & Western Railroad Company, now known as the Union Pacific Railroad Company, eastern division, shall build the railroad from the mouth of the Kansas river, by the way of Leavenworth, or if that

be not deemed the best route, then the said company shall, within two years, build a railroad from the city of Leavenworth to unite with the main stem at or near the city of Lawrence; but to aid in the construction of said branch the said company shall not be entitled to any bonds. And if the Union Pacific Railroad Company shall not be proceeding in good faith to build the said railroad through the territories when the Leavenworth, Pawnee & Western Railroad Company, now known as the Union Pacific Railroad Company, eastern division, shall have completed their road to the hundredth degree of longitude, then the last-named company may proceed to make said road westward until it meets and connects with the Central Pacific Railroad Company on the same line. And the said railroad from the mouth of Kansas river to the one hundredth meridian of longitude shall be made by the way of Lawrence and Topeka, or on the bank of the Kansas river opposite said towns: *Provided*, That no bonds shall be issued or land certified by the United States to any person or company, for the construction of any part of the main trunk line of said railroad west of the one hundredth meridian of longitude and east of the Rocky mountains, until said road shall be completed from or near Omaha, on the Missouri river, to the said one hundredth meridian of longitude.

SEC. 13. *And be it further enacted*, That at and after the next election of directors, the number of directors to be elected by the stockholders shall be fifteen; and the number of directors to be appointed by the President shall be five; and the President shall appoint three additional directors to serve until the next regular election, and thereafter five directors. At least one of said government directors shall be placed on each of the standing committees of said company, and at least one on every special committee that may be appointed. The government directors shall, from time to time, report to the secretary of the interior, in answer to any inquiries he may make of them touching the condition, management, and progress of the work, and shall communicate to the secretary of the interior, at any time, such information as should be in the possession of the department. They shall, as often as may be necessary to a full knowledge of the condition and management of the line, visit all portions of the line of road whether built or surveyed; and while absent from home attending to their duties as directors, shall be paid their actual traveling expenses, and be allowed and paid such reasonable compensation for their time actually employed as the board of directors may decide.

SEC. 14. *And be it further enacted*, That the next election for directors of said railroad shall be held on the first Wednesday of October next, at the office of said company in the city of New York, between the hours of ten o'clock a. m. and four o'clock p. m. of said day; and all subsequent regular elections shall be held annually thereafter at the same place; and the directors shall hold their office for one year, and until their successors are qualified.

SEC. 15. *And be it further enacted*, That the several companies authorized to construct the aforesaid roads are hereby required to ope-

rate and use said roads and telegraph for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one continuous line; and in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others; and it shall not be lawful for the proprietors of any line of telegraph, authorized by this act, or the act amended by this act, to refuse or fail to convey for all persons requiring the transmission of news and messages of like character, on pain of forfeiting to the person injured for each offense the sum of one hundred dollars, and such other damage as he may have suffered on account of said
86 refusal or failure, to be sued for and recovered in any court of the United States, or of any state or territory of competent jurisdiction.

SEC. 16. *And be it further enacted*, That any two or more of the companies authorized to participate in the benefits of this act are hereby authorized at any time to unite and consolidate their organizations, as the same may or shall be, upon such terms and conditions, and in such manner as they may agree upon, and as shall not be incompatible with this act, or the laws of the state or states in which the road of such companies may be, and to assume and adopt such corporate name and style as they may agree upon, with a capital stock not to exceed the actual cost of the roads so to be consolidated, and shall file a copy of such consolidation in the department of the interior; and thereupon such organization, so formed and consolidated, shall succeed to, possess, and be entitled to receive from the government of the United States, all and singular the grants, benefits, immunities, guaranties, acts, and things to be done and performed, and be subject to the same terms, conditions, restrictions and requirements which said companies respectively, at the time of such consolidation, are or may be entitled or subject to under this act, in place and substitution of said companies so consolidated respectively. And all other provisions of this act, so far as applicable, relating or in any manner appertaining to the companies so consolidated, or either thereof, shall apply and be of force as to such consolidated organization. And in case upon the completion by such consolidated organization of the roads, or either of them, of the companies so consolidated, any other of the road or roads of either of the other companies authorized as aforesaid, (and forming, or intended or necessary to form, a portion of a continuous line from each of the several points on the Missouri river, hereinbefore designated, to the Pacific coast,) shall not have constructed the number of miles of its said road within the time herein required, such consolidated organization is hereby authorized to continue the construction of its road and telegraph in the general direction and route upon which such incomplete or unconstructed road is hereinbefore authorized to be built, until such continuation of the road of such consoli-

dated organization shall reach the constructed road and telegraph of said other company, and at such point to connect and unite therewith; and for and in aid thereof the said consolidated organization may do and perform, in reference to such portion of road and telegraph as shall so be in continuation of its constructed road and telegraph, and to the construction and equipment thereof, all and singular, the several acts and things hereinbefore provided, authorized, or granted to be done by the company hereinbefore authorized to construct and equip the same, and shall be entitled to similar and like grants, benefits, immunities, guaranties, acts, and things to be done and performed by the government of the United States, by the President of the United
87 States, by the secretaries of the treasury and interior, and by commissioners, in reference to such company, and to such portion of the road hereinbefore authorized to be constructed by it, and upon the like and similar terms and conditions, so far as the same are applicable thereto. And said consolidated company shall pay to said defaulting company the value, to be estimated by competent engineers, of all the work done and material furnished by said defaulting company, which may be adopted and used by said consolidated company in the progress of the work under the provisions of this section: *Provided, nevertheless,* That said defaulting company may, at any time before receiving pay for its said work and material, as hereinbefore provided, on its own election, pay said consolidated company the value of the work done and material furnished by said consolidated company, to be estimated by competent engineers, necessary for and used in the construction of the road of said defaulting company, and resume the control of its said road; and all the rights, benefits and privileges which shall be acquired, possessed or exercised, pursuant to this section, shall be to that extent an abatement of the rights, benefits and privileges hereinbefore granted to such other company. And in case any company authorized thereto, shall not enter into such consolidated organization, such company, upon the completion of its road as hereinbefore provided, shall be entitled to, and is hereby authorized to continue and extend the same under the circumstances, and in accordance with the provisions of this section, and to have all the benefits thereof, as fully and completely as are herein provided, touching such consolidated organization. And in case more than one such consolidated organization shall be made, pursuant to this act, the terms and conditions of this act, hereinbefore recited as to one, shall apply in like manner, force and effect to the other: *Provided, however,* That rights and interests at any time acquired by one such consolidated organization, shall not be impaired by another thereof. It is further provided that should the Central Pacific Railroad Company of California complete their line to the eastern line of the state of California, before the line of the Union Pacific Railroad Company shall have been extended westward so as to meet the line of said first-named company, said first-named company may extend their line of road

eastward one hundred and fifty miles, on the established route, so as to meet and connect with the line of the Union Pacific Road, complying in all respects with the provisions and restrictions of this act as to said Union Pacific Road, and upon doing so, shall enjoy all the rights, privileges and benefits conferred by this act on said Union Pacific Railroad Company.

SEC. 17. *And be it further enacted*, That so much of section fourteen of said act as relates to a branch from Sioux City be and the same is hereby amended so as to read as follows: That whenever a line
88 of railroad shall be completed through the states of Iowa or Minnesota, to Sioux City, such company, now organized or may hereafter be organized under the laws of Iowa, Minnesota, Dakota, or Nebraska, as the President of the United States, by its request, may designate or approve for that purpose, shall construct and operate a line of railroad and telegraph from Sioux City, upon the most direct and practicable route, to such a point on, and so as to connect with, the Iowa branch of the Union Pacific Railroad from Omaha, or the Union Pacific Railroad, as such company may select, and on the same terms and conditions as are provided in this act, an the act to which this is an amendment, for the construction of the said Union and Pacific Railroad and telegraph line and branches; and said company shall complete the same at the rate of fifty miles per year: *Provided*, That said Union Pacific Railroad Company shall be and is hereby released from the construction of said branch. And said company constructing said branch shall not be entitled to receive in bonds an amount larger than the said Union Pacific Railroad Company would be entitled to receive if it had constructed the branch under this act and the act to which this is an amendment; but said company shall be entitled to receive alternate sections of land for ten miles in width on each side of the same along the whole length of said branch: *And provided further*, That if a railroad should not be completed to Sioux City, across Iowa or Minnesota, within eighteen months from the date of this act, then said company, designated by the President as aforesaid, may commence, continue and complete the construction of said branch, as contemplated by the provisions of this act: *Provided, however*, That if the said company, so designated by the President as aforesaid, shall not complete the said branch from Sioux City to the Pacific Railroad within ten years from the passage of this act, then, and in that case, all the railroad which shall have been constructed by said company shall be forfeited to and become the property of the United States.

SEC. 18. *And be it further enacted*, That the Burlington & Missouri River Railroad Company, a corporation organized under and by virtue of the laws of the state of Iowa, be, and hereby is, authorized to extend i[t]s road through the territory of Nebraska, from the point where it strikes the Missouri river, south of the mouth of the Platte river, to some point not further west than the one hundredth meridian of west longitude, so as to connect by the most practicable route with the main trunk of the Union Pacific Railroad, or that part of

it which runs from Omaha to the said one hundredth meridian of west longitude. And for the purpose of enabling said Burlington & Missouri River Railroad Company to construct that portion of their road herein authorized, the right of way through the public lands is hereby granted to said company for the construction of said road. And the right, power and authority is hereby given to said company to take from the public lands adjacent to the line of said
89 road, earth, stone, timber, and other materials for the construction thereof. Said right of way is granted to said company to the extent of two hundred feet where it may pass over the public lands, including all necessary grounds for stations, buildings, work-shops, depots, machine shops, switches, side tracks, turn-tables, and water stations. And the United States shall extinguish as rapidly as may be consistent with public policy and the welfare of the said Indians, the Indian titles to all lands falling under the operation of this section and required for the said right of way and grant of land herein made.

SEC. 19. *And be it further enacted*, That for the purpose of aiding in the construction of said road, there be, and hereby is, granted to the said Burlington & Missouri River Railroad Company, every alternate section of public land (excepting mineral lands as provided in this act) designated by odd numbers, to the amount of ten alternate sections per mile on each side of said road, on the line thereof, and not sold, reserved, or otherwise disposed of by the United States, and to which a preëmption or homestead claim may not have attached at the time the line of said road is definitely fixed: *Provided*, That said company shall accept this grant within one year from the passage of this act, by filing such acceptance with the secretary of the interior, and shall also establish the line of said road, and file a map thereof with the secretary of the interior, within one year of the date of said acceptance, when the said secretary shall withdraw the lands embraced in this grant from market.

SEC. 20. *And be it further enacted*, That whenever said Burlington and Missouri River Railroad Company shall have completed twenty consecutive miles of the road mentioned in the foregoing section, in the manner provided for other roads mentioned in this act, and the act to which this is an amendment, the President of the United States shall appoint three commissioners to examine and report to him in relation thereto; and if it shall appear to him that twenty miles of said road have been completed as required by this act, then, upon certificate of said commissioner[s] to that effect, patents shall issue conveying the right and title to said lands to said company on each side of said road, so far as the same is completed, to the amount aforesaid; and such examination, report and conveyance, by patents, shall continue from time to time, in like manner, until said road shall have been completed. And the President shall appoint said commissioners to fill vacancies in said commission, as provided in relation to other roads mentioned in the act to which this is an amendment. And the said company shall be entitled to all the

privileges and immunities granted to the Hannibal & Saint Joseph Railroad Company by the said last-mentioned act, so far as the same may be applicable: *Provided*, That no government bonds shall be issued to the said Burlington & Missouri River Railroad Company to aid in the construction of said extension of its road: *And provided, further*, That said extension shall be completed within the period of ten years from the passage of this act.

SEC. 21. *And be it further enacted*, That before any land granted by this act shall be conveyed to any company or party entitled thereto under this act, there shall first be paid into the treasury of the United States the cost of surveying, selecting, and conveying the same by the said company or party in interest, as the titles shall be required by said company, which amount shall, without any further appropriation, stand to the credit of the proper account, to be used by the commissioner of the general land office for the prosecution of the survey of the public lands along the line of said road, and so from year to year until the whole shall be completed, as provided under the provisions of this act.

SEC. 22. *And be it further enacted*, That Congress may at any time alter, amend, or repeal this act.

Approved July 2, 1864.

C.

[JOINT RESOLUTION OF JULY 26, 1866.]

A RESOLUTION granting the right of way through military reserves to the Union Pacific Railroad Company and its branches.

* * * * * * * *

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to approval by the President, the right of way, one hundred feet in width, is hereby granted to the Union Pacific Railroad, and the companies constructing the branch roads connecting therewith, for the construction and operation of their roads over and upon all military reserves through which the same may pass; and the President is hereby authorized to set apart to the Union Pacific Railway Company, eastern division, twenty acres of the Fort Riley military reservation, for depot and other purposes, in the bottom opposite "Riley City"; also, fractional section "one" on the west side of said reservation, near Junction City, for the same purposes; and also to restore from time to time to the public domain any portion of said military reserve over which the Union Pacific Railroad, or any of its branches, may pass, and which shall not be required for military purposes: *Provided*, That the President shall not permit the location of any such railroad or the diminution of any such reserve in any manner so as to impair its usefulness for military purposes, so long as it shall be required therefor.

Approved July 26, 1866.

91 D.

[An act relating to the Denver Pacific, March 3, 1869.]

An act to authorize the transfer of lands granted to the Union Pacific Railway Company, eastern division, between Denver and the point of its connection with the Union Pacific Railway, to the Denver Pacific Railway and Telegraph Company, and to expedite the completion of railroads to Denver, in the territory of Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Union Pacific Railway Company, eastern division, be, and it hereby is, authorized to contract with the Denver Pacific Railway and Telegraph Company, a corporation existing under the laws of the territory of Colorado, for the construction, operation and maintenance of that part of its line of railroad and telegraph, between Denver city and its point of connection with the Union Pacific Railroad, which point shall be at Cheyenne, and to adopt the road-bed already graded by said Denver Pacific Railway and Telegraph Company as said line, and to grant to said Denver Pacific Railway and Telegraph Company the perpetual use of its right of way and depot grounds, and to transfer to it all the rights and privileges, subject to all the obligations pertaining to said part of its line.

SEC. 2. *And be it further enacted*, That the said Union Pacific Railway Company, eastern division, shall extend its railroad and telegraph to a connection at the city of Denver, so as to form with that part of its line herein authorized to be constructed, operated, and maintained by the Denver Pacific Railway and Telegraph Company, a continuous line of railroad and telegraph from Kansas City, by way of Denver, to Cheyenne. And all the provisions of law for the operation of the Union Pacific Railroad, its branches and connections, as a continuous line, without discrimination, shall apply the same as if the road from Denver to Cheyenne had been constructed by the Union Pacific Railway Company, eastern division; but nothing herein shall authorize the said eastern division company to operate the road or fix the rates of tariff for the Denver Pacific Railway and Telegraph Company.

SEC. 3. *And be it further enacted*, That said companies are hereby authorized to mortgage their respective portions of said road, as herein defined, for an amount not exceeding thirty-two thousand dollars per mile, to enable them respectively to borrow money to construct the same; and that each of said companies shall receive patents to the alternate sections of land along their respective lines of road, as herein defined, in like manner and within the same limits as is provided by law in the case of lands granted to the Union Pacific Railway Company, eastern division: *Provided*, That
116 neither of the companies hereinbefore mentioned shall be entitled to subsidy in United States bonds under the provisions of this act.

Approved March 3, 1869.

E.

[Joint resolution of March 3, 1869.]

Joint resolution authorizing the Union Pacific Railway Company, eastern division, to change its name to the "Kansas Pacific Railway Company."

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Union Pacific Railway Company, eastern division, is hereby authorized by resolution of its board of directors, which shall be filed in the office of the secretary of the interior, to change its name to the "Kansas Pacific Railway Company."

Approved March 3, 1869.

Consolidation.—Articles of Consolidation and Documents Relating Thereto.

The Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway & Telegraph Company, (act of March 3, 1869, 15 Stat. at Large, 324,) consolidated January 24, 1880, under the name of the UNION PACIFIC RAILWAY COMPANY.

The constituent companies are all parts of the Pacific SYSTEM of roads aided by Congress. In the original charter of the companies, (act of July 1, 1862, 12 Stat. at Large, 489,) Congress authorized consolidation, in the sixteenth section, as follows:

A.

SEC. 16. *And be it further enacted*, That at any time after the passage of this act all of the railroad companies named herein and assenting hereto, or any two or more of them, are authorized to form themselves into one consolidated company; notice of such consolidation, in writing, shall be filed in the department of the interior, and such consolidated company shall thereafter proceed to construct said raid railroad and branches and telegraph line upon the terms and conditions provided in this act.

In the amendatory act of July 2, 1864, (13 Stat. at Large, 356, authority to consolidate was conferred by Congress in the following terms:

B.

SEC. 16. *And be it further enacted*, That any two or more of the companies authorized to participate in the benefits of this act are hereby authorized at any time to unite and consolidate their organizations, as the same may or shall be, upon such terms and conditions, and in such manner as they may agree upon, and as shall not be incompatible with this act or the laws of the state or states in which the road of such companies may be, and to assume and adopt such corporate name and style as they may agree upon, with a cap-

ital stock not to exceed the actual cost of the roads so to be consolidated, and shall file a copy of such consolidation in the
94 department of the interior; and thereupon such organization, so formed and consolidated, shall succeed to, possess, and be entitled to receive from the government of the United States, all and singular the grants, benefits, immunities, guaranties, acts, and things to be done and performed, and be subject to the same terms, conditions, restrictions, and requirements which said companies respectively, at the time of such consolidation, are or may be entitled or subject to under this act, in place and substitution of said companies so consolidated respectively. And all other provisions of this act, so far as applicable, relating or in any manner appertaining to the companies so consolidated, or either thereof, shall apply and be of force as to such consolidated organization. And in case upon the completion by such consolidated organization of the roads, or either of them, of the companies so consolidated, any other of the road or roads of either of the other companies authorized as aforesaid, (and forming, or intended or necessary to form, a portion of a continuous line from each of the several points on the Missouri river, hereinbefore designated, to the Pacific coast,) shall not have constructed the number of miles of its said road within the time herein required, such consolidated organization is hereby authorized to continue the construction of its road and telegraph in the general direction and route upon which such incomplete or unconstructed road is hereinbefore authorized to be built, until such continuation of the road of such consolidated organization shall reach the constructed road and telegraph of said other company, and at such other point to connect and unite therewith; and for and in aid thereof the said consolidated organization may do and perform, in reference to such portion of road and telegraph as shall so be in continuation of its constructed road and telegraph, and to the construction and equipment thereof, all and singular the several acts and things hereinbefore provided, authorized, or granted to be done by the company hereinbefore authorized to construct and equip the same, and shall be entitled to similar and like grants, benefits, immunities, guaranties, acts, and things to be done and performed by the government of the United States, by the President of the United States, by the secretaries of the treasury and interior, and by commissioners, in reference to such company, and to such portion of the road hereinbefore authorized to be constructed by it, and upon the like and similar terms and conditions, so far as the same are applicable thereto. And said consolidated company shall pay to said defaulting company the value, to be estimated by competent engineers, of all the work done and material furnished by said defaulting company, which may be adopted and used by said consolidated company in the progress of the work under the provisions of this section: *Provided, nevertheless,* That said defaulting company may, at any time before receiving pay for its said work

and material as hereinbefore provided, on its own
95 election, pay said consolidated company the value of the work done and material furnished by said consolidated company, to be estimated by competent engineers, necessary for and used in the construction of the road of said defaulting company, and resume the control of its said road; and all the rights, benefits and privileges which shall be acquired, possessed, or exercised, pursuant to this section, shall be to that extent an abatement of the rights, benefits and privileges hereinbefore granted to such other company. And in case any company authorized thereto, shall not enter into such consolidated organization, such company, upon the completion of its road as hereinbefore provided, shall be entitled to, and is hereby authorized to continue and extend the same under the circumstances, and in accordance with the provisions of this section, and to have all the benefits thereof, as fully and completely as are herein provided, touching such consolidated organization. And in case more than one such consolidated organization shall be made, pursuant to this act, the terms and conditions of this act, hereinbefore recited as to one, shall apply in like manner, force and effect to the other: *Provided, however*, That rights and interests at any time acquired by one such consolidated organization, shall not be impaired by another thereof. It is further provided that should the Central Pacific Railroad Company of California complete their line to the eastern line of the state of California, before the line of the Union Pacific Railroad Company shall have been extended westward so as to meet the line of said first-named company, said first-named company may extend their line of road eastward one hundred and fifty miles, on the established route, so as to meet and connect with the line of the Union Pacific Road, complying in all respects with the provisions and restrictions of this act as to said Union Pacific Road, and upon doing so, shall enjoy all the rights, privileges and benefits conferred by this act on said Union Pacific Railroad Company.

The following official records from the offices of secretaries of state for Nebraska, Kansas and Colorado are printed for the purpose of showing that if it should be held that the state laws of these states in force in 1880 are applicable to the question of consolidation of the Pacific roads, that those laws have been complied with, as well as the acts of Congress—thus putting the power to consolidate and the validity of the consolidation beyond controversy.

In Nebraska, in 1880, railroad corporations were authorized to consolidate when articles of consolidation are approved by a two-thirds vote of the stockholders. (Gen. Sat. of Neb., 1873, pp. 188, 189, secs. 89, 90, 91.)

96 In Kansas, consolidation is authorized "on the approval, in writing, of the persons or parties holding and representing two-thirds of such stock." (Comp. Laws 1879, p. 787, sec. 4932.)

In Colorado, consolidation is authorized if the proposition shall

be approved "by a vote of two-thirds of the stock of each company, severally." (Gen. Laws of Col., 1877, p. 185, sec. 315 [125]; id. p. 187, sec. 318 [128].)

C.

Certified Copy of Articles of Consolidation.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *October* 23, 1880.

I, Alonzo Bell, acting secretary of the interior, do hereby certify that the annexed are true copies of a certified copy of articles of union and consolidation, and of the ratification of said articles by the stockholders of the Kansas Pacific Railway Company on the files of this department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department to be affixed, the day and year above written.

[SEAL.]

A. BELL,
Acting Secretary of the Interior.

Articles of Union and Consolidation

Between the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, forming the Union Pacific Railway Company.

Whereas the Union Pacific Railroad Company, a corporation duly organized and existing under the act of Congress of July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military and other purposes," and the act of Congress of July 2, 1864, and various other acts amendatory of the foregoing, owns a line of railroad and telegraph extending from the Missouri river to Ogden, in the territory of Utah, a distance of 1,042 miles;

And whereas the Kansas Pacific Railway Company, described in the said act of Congress of July 1, 1862, as the Leavenworth, Pawnee & Western Railroad Company, the name whereof was afterward changed to that of the Union Pacific Railway Company, eastern division, and again subsequently changed to the Kansas Pacific Railway Company, is a corporation which is entitled to participate in the benefits of the said act of Congress of July 1, 1862, and of July 2, 1864, and the various acts amendatory thereof and relating thereto;

And whereas the said Kansas Pacific Railway Company owns and operates, as a branch of the Union Pacific Railroad, a rail-
97 road and telegraph line from a point connecting with the Missouri Pacific Railroad in Kansas City, in Missouri; thence from the Missouri river, at the mouth of the Kansas river, on the

south side thereof, with a spur from Wyandotte, in the state of Kansas, being from the east state line of Kansas to Denver, 639 miles in length, with a branch from a point on the main line near Lawrence to Leavenworth, 34 miles in length, in said state of Kansas, connecting at Denver with the Denver Pacific Railway, and is entitled to extend said railroad to the western boundary of the former territory of Kansas, to locate and construct branches of said railroad in the counties of the former territory of Kansas, adjacent to the line of said railroad as then located and defined by law;

And whereas the Denver Pacific Railway and Telegraph Company, under and by virtue of the said acts of Congress, and of an act of Congress approved March 3, 1869, entitled "An act to authorize the transfer of lands granted to the Union Pacific Railway Company, eastern division, between Denver and the point of connection with the Union Pacific Railroad to the Denver Pacific Railway and Telegraph Company, and to expedite the completion of railroads to Denver, in the territory of Colorado;" and of an act of Congress approved June 20, 1874, which, among other things, enacts that for all the purposes of the said act of July 1, 1862, and of the acts amendatory thereof, "The Denver Pacific Railway and Telegraph Company shall be deemed and taken to be a part and extension of the road of the Kansas Pacific Railroad to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyenne, as provided in the act of March 3, 1869," whereby and by force whereof the said Denver Pacific Railway and Telegraph Company is likewise entitled to participate in the benefits of the aforementioned acts of Congress of July 1, 1862, and July 2, 1864, and the various acts amendatory thereof and supplemental thereto and relating to the Pacific system of railroads; all of which, whether particularly herein described or not, are, for greater certainty in this behalf, referred to and made part hereof;

And whereas the said Denver Pacific Railway and Telegraph Company owns a line of road one hundred and six miles in length, extending from Denver, where it connects with the said Kansas Pacific Railway, to Cheyenne, where it connects with the Union Pacific Railroad;

And whereas in the aforesaid legislation of Congress applicable to the above mentioned three railroad companies it is provided that they may unite and consolidate their respective orgonizations;

And whereas each of the said above mentioned three companies, by corporate action duly and severally had, have resolved, pursuant to the authority in that behalf vested in them by law, to unite and consolidate their respective organizations into one company,
98 and have severally agreed to and with each other upon the terms of such union and consolidation, being the terms herein embodied and expressed:

Now this agreement and consolidation, made this the 24th day of January, A. D. 1880, between the said Union Pacific Railroad Company, party of the first part, the said Kansas Pacific Railway Com-

pany, party of the second part, and the said Denver Pacific Railway and Telegraph Company, party of the third part, witnesseth:

That the said parties have respectively agreed and do hereby severally agree to and with each other upon the following articles of union and consolidation of their respective organizations into one company, viz:

ARTICLE I. The said Union Pacific Railroad Company, the said Kansas Pacific Railway Company, and the said Denver Pacific Railway and Telegraph Company, in consideration of the premises, do hereby severally agree to and with each other to unite and consolidate, and do hereby unite, form, and consolidate their respective organizations, properties, and companies into one consolidated company, which shall succeed to, possess, and be entitled to receive from the Government of the United States all and singular the grants, benefits, immunities, guaranties, acts and things to be done and performed, and be subject to the same terms, conditions, restrictions, and requirements which the aforesaid three companies, respectively, at the date of this consolidation, are or may be entitled or subject to under the acts of Congress in that behalf, in place and substitution of said constituent companies so consolidated, respectively; and the said consolidated company assumes to and for itself all of the provisions of said acts of Congress, so far as applicable, relating or in any manner appertaining to said constituent companies, or either of them, including the power to sue and be sued in all courts of law and equity within the United States, whether federal or state, and the right of corporations organized under a law of the United States to remove causes from state to federal courts; and all of the provisions of the aforementioned acts of Congress and each of them, so far as in their nature applicable to the company hereby formed, shall apply thereto; it being the intent of the parties hereto and of these articles of union and consolidation to organize the company hereby formed under the said acts of Congress, and to make the said acts of Congress the charter or constituent acts of this company as fully as if the same were incorporated herein at large.

ART. II. The name of the said consolidated company hereby formed shall be "The Union Pacific Railway Company."

ART. III. The capital stock of the said Union Pacific Railway Company shall be fifty millions seven hundred and sixty-two thousand three hundred ($50,762,300) dollars, (being the total aggregate amount of the outstanding stock of the three constituent companies,) which shall be divided into shares of one hundred dollars each; and it shall be issued in lieu of the stock of the
99 said constituent companies on the surrender thereof for that purpose by the respective holders thereof. Every stockholder in the Denver Pacific Railway and Telegraph Company and in the Union Pacific Railroad Company shall receive in place of every share of one hundred dollars surrendered a share of one hundred dollars in the new company; and every stockholder in the Kansas Pacific Railway Company, the shares in which are only fifty

($50) dollars each, shall receive in place of every two shares of the stock at the time held by such stockholder in such company a share of the capital stock of the new corporation, upon surrendering to the new corporation the certificates of stock held by such stockholder.

ART. IV. The said new corporation shall, without unnecessary delay, issue certificates of stock, in such form as may by the board of directors be deemed advisable; and such board shall provide and adopt such rules and regulations as may be necessary and proper for the issuing and transfer of shares of stock of the said new corporation.

ART. V. The directors of the said Union Pacific Railway Company, to be elected by the stockholders at the annual meeting herein provided for, shall be fifteen in number, each of whom must be the *bona fide* owner of at least fifty shares of stock in the consolidated company. Such directors shall be chosen annually by the majority of the votes of the stockholders voting in person or by proxy at such election. And they shall continue to be directors until others are elected and qualified in their places. No person shall be a director unless he shall be qualified to vote for directors at the election at which he shall be chosen; and vacancies in the board of directors may be filled by the remaining directors at any regular meeting of the board. The directors of the said company shall annually, as soon as may be after their election, elect from their own number a president and vice-president, and shall also elect a treasurer and secretary.

ART. VI. The following-named persons shall be the first directors of said corporation, viz.: Fred L. Ames, Ezra H. Baker, Elisha Atkins, F. Gordon Dexter, Sidney Dillon, Russell Sage, Jay Gould, Solon Humphreys, David Dows, William L. Scott, Silas H. H. Clark, Thomas T. Eckert, John Sharp, Grenville M. Dodge, Carlos S. Greeley. The following-named persons shall be the first officers of the said corporation, viz.: President, Sidney Dillon; vice-president, Elisha Atkins; treasurer and secretary, Henry McFarland. The said directors and officers shall continue in office until their successors are chosen as provided in these articles.

ART. VII. Until otherwise duly provided, the annual meeting of the stockholders of the Union Pacific Railway Company shall be held at the company's office in the city of New York, on the first Wednesday following the fourth day of March in each year, between the hours of 10 o'clock A. M. and 4 o'clock P. M. of said day.
100 Notice of such meeting shall be given as may be prescribed by the by-laws. These provisions may be changed by the stockholders of the consolidated company at any annual meeting of the said stockholders.

ART. VIII. The parties hereto of the first, and second, and third parts hereby assign, transfer, set over, and convey unto the said Union Pacific Railway Company, the consolidated corporation hereby formed, all the rights, privileges, exemptions, and franchises of each of said companies, parties hereto, and all the property, real, personal and mixed, and all choses in action, debts on whatever account

of, owing or belonging to either of said companies, and all claims, demands, property, rights of way, leases, leasehold interests, branches, iron rails, rolling stock, tools and implements, and property of every description, name, and nature belonging to either of the said companies, with the appurtenances, to be held, owned and controlled by the said consolidated corporation, its successors and assigns, as fully and completely, to all intents and purposes, as the respective parties hereto do or can now own, hold, use, enjoy, or control the same; and the parties hereto agree to execute and deliver to said consolidated corporation instruments of transfer, or assignments, or other instruments proper or necessary to carry out the covenants, conditions and provisions of this agreement. This assignment, transfer, sale and conveyance is made to the said consolidated corporation subject to all liens, charges and equities pertaining thereto.

ART. IX. Nothing in this agreement contained shall affect or prejudice any right otherwise existing of the consolidated company to make such further increase of stock or bonds as said consolidated company may by law be entitled to make, or restrict the amount of stock or bonds which such consolidated company is by law authorized to issue or make. Nor shall anything herein contained affect or impair the right to issue all unissued bonds under the Kansas Pacific consolidated mortgage of date May 1, 1879, wherein Jay Gould and Russell Sage are trustees, but such unissued bonds may, notwithstanding this consolidation, be issued in the same manner, and with the same effect in all respects as if these articles had not been adopted and executed.

And it is expressly agreed that the stockholders of the consolidated company shall have all the powers which would have been possessed by the stockholders of each constituent company if this consolidation had not been effected, to ratify, approve, and carry out any contracts made by either constituent company, and requiring the ratification or approval of its stockholders.

The power of the Union Pacific Railroad Company to issue all unissued bonds under the mortgage of July 1, 1879, wherein the Union Trust Company is trustee, is fully and completely reserved.

ART. X. The new company hereby formed does not herein assume any separate or individual liability for the outstanding debts, obligations, and liabilities of the respective constituent companies, whose several and separate existence as to third parties
101 shall, as respects such debts, obligations, and liabilities of every kind and nature, still continue, notwithstanding these articles of union and consolidation. But nothing herein contained shall prevent any valid debt, obligation, or liability of either constituent company from being enforced against the property of the proper constituent company, which by force of these articles becomes the property of the consolidated company. The corporate existence of the respective constituent companies shall not absolutely cease,

eo instanti, on the consummation of the union and consolidation herein provided for, but shall remain and continue so far as necessary to carry out the intent and purpose hereof.

ART. XI. These articles of consolidation shall go into effect, and the consolidated company hereby formed shall come into existence, upon the day on which a copy hereof is filed in the department of the interior, as provided in the legislation of Congress in that behalf.

ART. XII. The existing by-laws of the Union Pacific Railroad Company are hereby provisionally adopted, and shall apply to the company hereby formed until duly changed or repealed.

ART. XIII. All books, vouchers, records, instruments of title, cash, evidences of debt, contracts, and documents pertaining to the business or property of the said three companies, parties hereto, shall, without delay, be delivered to the proper officers of the consolidated company, and the said books, records, and papers shall be deemed and taken, as far as necessary, as the records and books of said consolidated company; and said books, records, vouchers, and papers shall be subject to the proper examination and inspection of all persons interested therein.

ART. XIV. These articles may be amended and modified from time to time, and in such manner as the holders of two-thirds of the stock of the consolidated company may direct or approve.

ART. XV. This agreement shall be executed on the part of the respective parties hereto by the proper officers, and under the corporate seals of said companies.

In witness whereof, the said parties have caused their respective corporate seals to be hereunto affixed, and the same to be attested by their respective presidents and secretaries, this the 24th day of January, A. D. 1880.

[SEAL.] THE UNION PACIFIC RAILROAD COMPANY,
BY SIDNEY DILLON, *President*.
Attest: HENRY MCFARLAND, *Secretary*.

[SEAL.] THE KANSAS PACIFIC RAILWAY COMPANY.
BY SIDNEY DILLON, *President*.
Attest: A. H. CALEF, *Secretary*.

THE DENVER PACIFIC RAILWAY & TELEGRAPH COMPANY,
[SEAL.] BY D. M. EDGERTON, *President*.
Attest: D. H. MOFFATT, JR., *Acting Secretary*.

102 The Union Pacific Railway Company has signified, and hereby signifies, its assent to and acceptance of the foregoing articles of union and consolidation, January 24, 1880.

[SEAL.] THE UNION PACIFIC RAILWAY COMPANY,
BY SIDNEY DILLON, *President*.

D.

Stockholders' Ratification and Approval.

STATE OF KANSAS, } ss.
Office of secretary of state, }

I, James Smith, secretary of state of the state of Kansas, do hereby certify that the following is a true and correct copy of the copy of the articles of union and consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and Denver Pacific Railway and Telegraph Company, into the Union Pacific Railway Company, and a true and correct copy of the copy of the ratification and approval of the stockholders of the Kansas Pacific Railway Company, and a true and correct copy of the original certificate of A. H. Calef, secretary Kansas Pacific Railway Company, filed in this office April 30, 1880.

(COPY B.)

Stockholders' Ratification and Approval.

Know all men by these presents, that we, the undersigned persons and parties holding and representing the shares of the capital stock of the Kansas Pacific Railway Company, now issued and outstanding, to the extent set forth opposite our respective names, have ratified and approved, and by these presents do ratify and approve, the articles of union and consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, into the Union Pacific Railway Company, dated the 24th day of January, A. D. 1880, and hereby referred to for greater certainty, and made part hereof.

103 *Names.*	*Number of shares.*	*Residence.*
Jay Gould	79,414	New York.
Sidney Dillon	6,118	5 W. 37th street, N.Y.
C. S. Greeley	1,126	Saint Louis, Mo.
G. M. Dodge	119	Council Bluffs, Iowa.
F. Gordon Dexter	2,514	Boston, Mass.
F. Gordon Dexter, trustee	42	Do.
E. H. Baker	548	Do.
Frederick L. Ames	4,035	North Easton, Mass.
C. J. Morrill, by E. H. Baker	548	Boston, Mass.
James M. Ham, treasurer	3,830	New York.
A. G. P. Segur	1,000	Brooklyn, N. H.
Russell Sage	9,977	New York.
C. E. Silkworth	1,000	Do.
F. L. Mathez	900	Do.
Myers, Rutherford & Co	9,015	Do.
James Buell, by Russell Sage	1,078	Do.
Prince & Whitely	400	Do.

Names.	*Number of shares.*	*Residence.*
Mills, Robeson & Smith	100	New York.
Robin & Robinson	500	Do.
L. D. Alexander	300	Do.
Field & James	300	Do.
A. M. Kidder & Co.	200	Do.
Ham & Munroe	829	Do.
Edwin H. Perkins, jr., by Russell Sage.	718	Do.
Woerishhoffer & Co.	1,300	Do.
John S. Tilney & Co.	300	Do.
Edward Sweet & Co.	200	Do.
Groot & Chapman	1,000	Do.
F. W. Gilley, jr., & Co.	500	Do.
L. Chase & Co.	400	Do.
Hewson, Kilbreth & Co.	1,406	Do.
Iselin & Barker	2,000	Do.
George W. Perkins	718	Do.
James F. Woodward	718	Do.
Jacob Berry	1,300	Do.
Grant & Co.	500	Do.
V. B. King	1,400	Do.
B. P. Learned & Co.	300	Do.
E. C. Homans & Co.	200	Do.
Archibald Turner & Co.	200	Do.
P. W. Gallaudet	300	Do.
Putnam & Earle	400	Do.
H. L. Horton & Co.	200	Do.
Chase & Higginson	15,607	Do.
William Alexander Smith	2,000	Do.
William Alexander Smith & Co., attorney	600	Do.
Do.	800	Do.
Addison Cammack	201	Do.

THE STATE OF NEW YORK,
City and county of New York.

I, A. H. Calef, secretary of the Kansas Pacific Railway Company, do hereby certify and state that annexed hereto is a true copy of the articles of union and consolidation of the Union Pacific, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company into the Union Pacific Railway Company. And I further certify and state that the said articles of union and consolidation were ratified and approved in writing before said articles took effect, by stockholders holding and representing more than two-thirds of all the stock of the said Kansas Pacific Railway Company, a copy of which ratification and approval is hereto annexed, marked
104 B, and made part of this certificate; and I further certify and state that up to the date of making this certificate that stock-

holders holding 199,084 shares of stock of the said Kansas Pacific Railway Company have, pursuant to said articles of union and consolidation, surrendered their stock in said Kansas Pacific Railway Company, and exchanged the same for and received in lieu thereof the stock of said Union Pacific Railway Company.

In witness whereof I have hereunto set my hand and the seal of the said Kansas Pacific Railway Company this 26th day of April, A. D. 1880.

[SEAL.] (Signed) A. H. CALEF,
Secretary Kansas Pacific Railway Company.

In testimony whereof I have hereunto subscribed my name and affixed my official seal. Done at Topeka, this 1st day of May, A. D. 1880.

[SEAL.] (Signed) JAMES SMITH,
Secretary of State.

E.

Proceedings of meeting of stockholders of the Union Pacific Railroad Company, held August 18, 1880, *at Omaha, Neb., ratifying the articles of union and consolidation.*

At a meeting of the stockholders of the Union Pacific Railroad Company, held at the office of said company in the city of Omaha, Neb., on the 18th day of August, 1880, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of said day, said meeting being held in pursuance of the call therefor and notices thereof given, as appearing by the following certificate of Henry McFarland, secretary of the said company, in words and figures as follows:

[COPY.]

I, Henry McFarland, hereby certify that I am the secretary of the Union Pacific Railroad Company, and as such secretary I have charge of the records and files of said company; that it appears by said records that at a meeting of the executive committee of the board of directors of the Union Pacific Railroad Company, held in New York on March 10, 1880, at which were present Messrs. Dillon, Atkins, Baker, Dexter, and Ames, it was, on motion of Mr. Baker, seconded by Mr. Atkins,

"*Voted*, That the president be authorized to call a special meeting of the stockholders of the Union Pacific Railroad Company at such time and place and in such manner as counsel may advise, to take action in respect to the articles of consolidation and union, with a view to a formal ratification and record thereof in the state of Nebraska and elsewhere."

I further certify that at a meeting of the directors of the Union Pacific Railroad Company, held in Boston on March 5, 1879, it was, on motion of Mr. Sage,

"*Resolved*, That while the board of directors is not in session the full power thereof under the charter and by-laws be, and it hereby is, conferred upon the executive committee."

I further certify, that it appears by said records that the following communication was received and placed on the files of the company, to wit:

"To SIDNEY DILLON,

"*President of the Union Pacific Railroad Company:*

"The undersigned owners of the number of shares of stock in said company set opposite respective names, in the aggregate amounting to more than one-fourth of all the capital stock, hereby make application to you to call a special meeting of the stockholders of said company, to be held at the office of the company, in Omaha, on the 18th day of August, 1880, for the purpose of determining by vote of the corporation, its assent to or dissent from the articles of union and consolidation between said company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, of date January 24, 1880.

"The undersigned ask that the notice of such special meeting be given and published as required by law on that behalf, stating the object of the meeting.

"The separate assent of more than two-thirds of the stock in the Union Pacific Railroad Company having been given to the said articles of union and consolidation, the undersigned deem it proper that a meeting be called, that such assent may be manifested by a recorded vote of the stockholders at a meeting of the company to be held for that purpose.

Names of stockholder.	*Number of shares.*	*Amount.*
Sidney Dillon	27,150	$2,715,000
Sidney Dillon, trustee	12,150	1,200,000
Hannah Dillon	2,000	200,000
E. H. Baker, for self and others	8,000	800,000
Fred. L. Ames, executor	37,515	3,751,500
Fred. L. Ames	1,357	135,700
Helen A. Ames, by F. L. Ames, attorney	1,000	100,000
Oliver Ames and Sons	140	14,000
W. E. Connor	21,400	2,140,000
A. G. P. Segur	6,305	630,500
E. A. Quinn	1,500	150,000
C E. Silkworth	3,300	330,000
F. L. Mathez, jr	2,500	250,000
William D. Segur	1,000	100,000
H. Cumiskey	1,000	100,000

I further certify, that in pursuance of said resolution of the executive committee, passed on March 10, 1880, and in pursuance of the application in writing of stockholders owning in the aggregate

more than one-fourth of all the capital stock of the company, the following notice, to wit:

106 "PUBLIC NOTICE.

"Whereas stockholders holding more than one-fourth part of the capital stock of the Union Pacific Railroad Company have duly applied in writing to the undersigned, the president of said company, to call a special meeting of the stockholders of said company, for the purpose of determining, by vote of the corporation, its assent to or dissent from the articles of union and consolidation between said company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, of date January 24, 1880—said application stating that the separate assent of more than two-thirds of the stock in the Union Pacific Railroad Company has been given to said articles of union and consolidation—it is deemed proper that a special meeting of the stockholders be called, that such assent be manifested by a recorded vote of the stockholders, at a meeting of the company to be held for that purpose:

"Now, therefore, pursuant to said application, I, Sidney Dillon, president of the said Union Pacific Railroad Company, do, by order of the board of directors, hereby call a special meeting of the stockholders of said company, to be held at the office of the Union Pacific Railroad Company, in the city of Omaha, Nebraska, on the 18th day of August, A. D. 1880, between the hours of ten o'clock a. m. and four o'clock p. m. on said day, for the purpose of determining, by vote of said corporation, its assent to or dissent from the said articles of union and consolidation, dated January 24, 1880, a copy of which has been duly filed with the secretary of the interior, and the original of which is on file, and can be seen at the company's office, 78 Broadway, New York.

"Given under my hand this 4th day of May, A. D. 1880.

"SIDNEY DILLON,

"*President of the Union Pacific Railroad Company.*

"HENRY MCFARLAND,

Secretary.

"N. B.—Nearly all stockholders having already assented to the consolidation, the purpose of the proposed meeting is merely to have that assent take the form of a recorded vote."

was sent on May 15, 1880, by mail, postage prepaid, to all the stockholders in the Union Pacific Railroad Company of record at the closing of the stock-books on January 24, 1880, and that the same notice was published in the Boston *Daily Advertiser*, a newspaper published in the city of Boston, Mass., daily, excepting the intervening Sundays, from and commencing with July 9 to August 12, inclusive, constituting thirty publications of said notice in said paper; and that the same notice was published in the New York *Tribune*, a newspaper published in the city of New York, daily, from and commencing with July 10 to August 9, inclusive, constituting thirty publications of said notice in said paper.

The sworn statements of the foremen or publishers of those newspapers are annexed.

And the same notice was also published in a newspaper published at Omaha, Nebraska, (Omaha being the city in Nebraska in which said corporation has its principal office of business,) called the Omaha *Weekly Herald*, as follows, viz: From and commencing with the 21st day of May, 1880, to the 8th day of July, A. D. 1880, inclusive, being more than six consecutive weeks prior to August 18, as shown by the affidavit of the book-keeper of said newspaper.

107 And the same notice was by me also addressed by name, and on May 18, 1880, sent by mail, postage prepaid, to each stockholder of record, as shown by the stock-books in the Union Pacific Railway Company, at Boston, at the close of business on May 4, 1880, and also in like manner to all stockholders in said company of record on the stock-books in New York, at the close of business on May 5, 1880, to whom, as stockholders in the Union Pacific Railroad Company, notice had not been sent on May 5, 1880, as hereinbefore stated.

HENRY McFARLAND,
Secretary Union Pacific Railroad Company.

STATE OF MASSACHUSETTS, }
County of Suffolk, } *ss.*

Subscribed and sworn to before me.
[SEAL.] JAMES G. HARRIS,
Notary Public.

"PUBLIC NOTICE.

"Whereas stockholders owning more than one-fourth part of the capital stock of the Union Pacific Railroad Company have duly applied in writing to the undersigned, the president of said company, to call a special meeting of the stockholders of said company for the purpose of determining by vote of the corporation its assent to or dissent from the articles of union and consolidation between said company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, of date January 24, 1880—said application stating that the separate assent of more than two-thirds of the stock in the Union Pacific Railroad Company has been given to said articles of union and consolidation—it is deemed proper that a special meeting of the stockholders be called, that such assent be manifested by a recorded vote of the stockholders, at a meeting of the company to be held for that purpose:

"Now, therefore, pursuant to said application, I, Sidney Dillon, president of the said Union Pacific Railroad Company, do, by order of the board of directors, hereby call a special meeting of the stockholders of said company, to be held at the office of the Union Pacific Railroad Company, in the city of Omaha, Nebraska, on the 18th day of August, A. D. 1880, between the hours of 10 o'clock a. m.

and 4 o'clock p. m. on said day, for the purpose of determining by vote of the said corporation its assent to or dissent from the said articles of union and consolidation, dated January 24th, 1880, a copy of which has been duly filed with the secretary of the interior, and the original of which is on file and can be seen at the company's office, 78 Broadway, New York.

"Given under my hand this 4th day of May, A. D. 1880.

"SIDNEY DILLON,
"*President of the Union Pacific Railroad Company.*
"HENRY McFARLAND,
"*Secretary.*

"N. B.—Nearly all stockholders having already assented to the consolidation, the purpose of the proposed meeting is merely to have that assent take the form of a recorded vote."

Proofs of the due publication of the notices in the foregoing certificate referred to and thereto annexed:

108 "STATE OF NEW YORK,
City and county of New York, } *ss.*

"W. P. Thompson, being duly sworn, saith that he is foreman in the office of the New York Daily Tribune, a newspaper printed in the city of New York; that the advertisement hereto annexed has been regularly published in the said New York Daily Tribune thirty times successively, commencing on the 10th day of July, 1880.

"W. P. THOMPSON.

"Sworn to before me, this 9th day of August, 1880.

"GORDON L. FORD,
Notary Public. Kings co., N. Y. (and N. Y. co.)"

"STATE OF NEBRASKA,
Douglas county, } *ss.*

"W. H. Remington, being duly sworn, deposes and says that he is book-keeper of the Omaha Weekly Herald, a newspaper printed at Omaha, in the said county of Douglas; that the printed notice hereto attached was published in the said weekly newspaper six consecutive weeks next after and including the 21st day of May, A. D. 1880. The said newspaper was, during that time, in general circulation in the county of Douglas and state of Nebraska.

(Signed) W. H. REMINGTON.

"Subscribed in my presence, and sworn to before me, this 8th day of July, 1880.

[SEAL. GEO. H. BOGGS,
Notary Public.

"Printer's fees, $14; affidavit, 25 cents; total, $14.25."

"STATE OF MASSACHUSETTS, } ss.
County of Suffolk, }

"On the 13th day of August, A. D. 1880, personally appeared before the undersigned, a justice of the peace within and for said county and state, E. F. Waters, treasurer, publisher of the Boston Daily Advertiser, a daily newspaper published at Boston, county of Suffolk, in the state of Massachusetts, and who, being duly sworn, states on oath that the 'notice special meeting stockholders Union Pacific Railroad Co.,' a true copy of which is hereto annexed, was published in said newspaper, in its issue of July 9, 1880, and thirty successive days in all, not including Sundays.

"BOSTON DAILY ADVERTISER,
"E. F. WATERS, *Treasurer.*

"Subscribed and sworn to before me, this 13th day of August, 1880.

"URIAH A. POLLARD,
"*Justice of the Peace.*"

The following proceedings were had:

The stockholders assembled at the time and place above mentioned, and organized by electing Joseph W. Gannett chairman, and A. J. Poppleton secretary of said meeting.

The secretary thereupon explained the object of said meeting to be to determine by a vote of the stockholders of the corporation its assent to or dissent from the articles of union and consolidation dated January 24, 1880, a copy of which has been duly filed with the secretary of the interior, and the original of which was presented to the stockholders assembled as aforesaid.

On motion of Mr. Poppleton, duly seconded, it was

Voted, That the chairman, Mr. Gannett, and Mr. Vis be appointed a committee to examine and report to the meeting the names of the stockholders present in person or by proxy, and the number of shares of stock held by them respectively in the Union Pacific Railroad Company, as shown on the books of said company, on
109 24th day of January, 1880, and who are entitled to vote at this meeting, which committee performed that duty and reported the following shares of such stock as being represented, and the same were of record upon the stock books of the Union Pacific Railroad Company on the said 24th day of January, 1880, to wit:

Names of shareholders present, in person or by proxy, and number of shares of stock in the Union Pacific Railroad Company held by them, as shown on the books of the company, on the 24th day of January, 1880, and which have not been exchanged for shares in the Union Pacific Railway Company.

Names.	*Proxies.*	*Number of shares.*
Sidney Dillon	J. W. Gannett	50
Estate of Oliver Ames, by Fred L. Ames, executor	do	37,115
Fred. L. Ames	do	1,357
Oliver Ames & Sons	J. W. Gannett (38,612)	140
First National Bank of Easton, as collateral	do	500
		39,162

On motion, the report of the committee was received and adopted.

On motion of Mr. Poppleton, duly seconded, it was

Resolved, That the said articles of union and consolidation, dated January 24, 1880, the original of which is here presented, and a copy of which is on file with the secretary of the interior, as above stated, whereby the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company have severally agreed to unite and consolidate into a new company called the Union Pacific Railway Company, be and the same are hereby ratified and approved, which said resolution was adopted by a vote of the following shares of stock in the said Union Pacific Railroad Company, standing on the books of said company on the 24th day of January, 1880, to wit:

Names.	*Proxies.*	*Number of shares.*
Sidney Dillon	J. W. Gannett	50
Estate of Oliver Ames, by Fred L. Ames, executor	do	37,115
Fred. L. Ames	do	1,357
Oliver Ames & Sons	do	140
First National Bank of Easton, as collateral	do	500
		39,162

There were no votes cast against the said resolution, and the said resolution was thereupon declared adopted, and ordered to be recorded.

On motion of Mr. Poppleton, duly seconded, it was

Voted, That Mr. Gannett and Mr. Vis be appointed a committee to examine and report to the meeting the names of shareholders and number of shares of stock in the said Union Pacific Railroad Company, which had been exchanged be-

tween the 24th day of January, 1880, and the 9th day of August, 1880, into the stock issued by the Union Pacific Railway Company, and which were entitled to vote at this meeting.

Said committee reported the following shares of such stock were represented and entitled to vote at this meeting, to wit:

Names of shareholders and number of shares of stock in the Union Pacific Railroad Company which have been exchanged between the 24th day of January, 1880, and the 9th day of August, 1880, into the stock issued by the Union Pacific Railway Company, entitled to vote at this meeting.

Names.	*Proxies.*		*Number of shares.*
Helen A. Ames	A. J. Poppleton		1,000
Fred. L. Ames	do		1,813
Oakes A. Ames	do		100
Oliver Ames, and Oliver Ames as collateral	do		600
Ebsha Atkins	do	500	
Do	do	2,165	
E. Atkins & Co	do	500	
F. Gordon Dexter	do	3,554	
S. Hooper & Co	do	2,164	
			8,373
Ezra H. Baker	do		2,330
Ester H. Baker	do		1,300
Rogers L. Barstow and Ezra L. Baker, trustees	do		1,200
John R. Brewer, executor	do	25	
Do	do	925	
			950
Geo. M. Barnard and Samuel Barnard, trustees	do		100
Joshua Ballard	do		250
Samuel Carr	do		100
Joseph H. Converse	do		300
F. Gordon Dexter, trustee	do		1,278
Faneuil Hall National Bank	do		2,315
Do	do		100
E. W. Gilmore	do		800
Jackson & Curtis	do		250
Helena M. Kent	do		1,300
George W. Kennedy	do		200
H. A. Lathrop	do	203	
H. A. Lathrop & Co	do	220	
			423
Rollins, Morse & Bro	do		275
I. E. Morrison	do		200
Mechanics' National Bank	do		200

Names.	Proxies.		Number of shares.
C. J. Morrill	A. J. Poppleton		1,996
John C. Sharp	do	100	
Mrs. Helen Sharp	do	400	
			500
Second National Bank of Boston	do		1,000
Thomas M. Stetson	do		780
Walker & Bro	do		600
H. C. Wainwright & Co	do		250
The Tremont National Bank	do		3,265
Tower, Giddings & Co	do		100
Putnam & Earle	do		500
Myers, Rutherford & Co	do		5,585½
Martin & Runyon	do		1,450
H. B. Hollins & Co	do		100
James M. Ham, treasurer	do		7,140
W. S. Gurney, jr., & Co	do		4,000
Jay Gould	do		1,620
Clark, Dodge & Co	do		1,100
O. N. Bogart & Co	do		900
John Bloodgood & Co	do		400
A. H. Brown	do		1,050
Blake Bros. & Co	do		2,780
Bound & Co	do		1,814
111 Belden, Bennett & Co	do		5,320
Closson & Hays	do		2,240
W. E. Connor	do		7,000
James R. Cowing	do		500
R. L. Cutting, jr., & Co	do		800
David Dows	do		1,000
Hannah Dillon	do		2,000
Sidney Dillon, trustee	do		12,100
Do	do		34,399
James H. Moore	do		425
F. W. Gilley, jr., & Co	do		6,110
Gregory & Ballou	do		1,100
Hallgarten & Co	do		1,400
Harriott & Noyes	do		400
W. T. Hatch & Sons	do		1,750
Edward King, president	do	5,000	
Do	do	8	
			5,008
Horace Manuel & Co	do		100
F. L. Mathez	do		18,100
G. P. Morosini	do		20,041½
Morton, Bliss & Co	do		1,802
E. A. Quinn	do		1,000

Names.	*Proxies.*	*Number of shares.*
David Richmond	A. J. Poppleton	3,803
Russell Sage	do	15,266
A. G. P. Segur	do	9,405
Vermilye & Co	do	3,261
Isaac Thacher	do	2,514
Moe S. Lott	do	4,400
Aaron Hobart, jr	do	1,033
E. Emmett	do	1,000
John J. Cisco & Son	do	400
G. M. Dodge	do	1,306
Dominick & Dickerman	do	200
Charles Head & Co	do	675
William Heath & Co.	do	600
Brayton Ives & Co	do	1,000
De Neufville & Co	do	845
C. E. Silkworth	do	2.000
Scott & Leavitt	do	1,300
Trask & Francis	do	1,184
Whitehouse & Co	do	400
Total		240,465

On motion of Mr. Poppleton, duly seconded, it was

Resolved, That the articles of union and consolidation, whereby the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway & Telegraph Company were united and consolidated into the Union Pacific Railway Company, of date January 24, 1880, the original whereof is here presented, and a copy whereof is on file with the secretary of the interior, be and the same are hereby ratified and approved.

The said resolution was passed by a vote of the following shares:

Name of shareholders and number of shares of stock in the Union Pacific Railroad Company have which been exchanged between the 24th day of January, 1880, and the 9th day of August, 1880, into the stock issued by the Union Pacific Railway Company entitled to vote at this meeting.

112

Names.	*Proxies.*	*Number of shares.*
Helen A. Ames	A. J. Poppleton	1,000
Fred. L. Ames	do	1,813
Oakes A. Ames	do	100
Oliver Ames, and Oliver Ames as collateral	do	600
Elisha Atkins	do	500
Do	do	2,165
E. Atkins & Co	do	500

Names.	Proxies.		Number of shares.
F. Gordon Dexter	do	3,544	
S. Hooper & Co	do	2,164	
			8,873
Ezra H. Baker	do		2,330
Esther H. Baker	do		1,300
Rogers L. Barstow and Ezra H. Baker, trustees	do		1,200
John R. Brewer, executor	do	25	
Do	do	925	
			950
Geo. M. Barnard and Sam'l Barnard, trustees	do		100
Joshua Ballard	do		250
Samuel Carr	do		100
Joseph H. Converse	do		300
F. Gordon Dexter, trustee	do		1,278
Faneuil Hall National Bank	do		2,315
Do	do		100
E. W. Gilmore	do		800
Jackson & Curtis	do		250
Helena M. Kent	do		1,300
George W. Kennedy	do		200
H. A. Lothrop	do	203	
H. A. Lothrop & Co	do	220	
			423
E. Rollins Morse & Brother	do		275
I. E. Morrison	do		200
Mechanics' National Bank	do		200
C. J. Morrill	do		1,996
John C. Sharp	do	100	
Mrs. Helen Sharp	do	400	
			500
Second National Bank of Boston	do		1,000
Thomas M. Stetson	do		780
Walker & Brother	do		600
H. C. Wainwright & Co	do		250
The Tremont National Bank	do		3,265
Tower, Giddings & Co	do		100
Putnam & Earle	do		500
Myers, Rutherford & Co	do		4,585½
Martin & Runyon	do		1,450
H. B. Hollins & Co	do		100
James M. Ham, treasurer	do		7,140
W. S. Gurney, jr., & Co	do		4,000
Jay Gould	do		1,620
Clark, Dodge & Co	do		1,100
O. N. Bogart & Co	do		900

	Names.	Proxies.	Number of shares.
	John Bloodgood & Co	do	400
	A. H. Brown	do	1,050
	Blake Brothers & Co	do	2,780
	Bound & Co	do	1,314
	Belden, Bennett & Co	do	5,320
	Closson & Hays	do	2,240
	W. E. Connor	do	7,000
	James R. Cowing	do	500
	R. L. Cutting, jr., & Co	do	300
	David Dows	do	1,000
	Hannah Dillon	do	2,000
	Sidney Dillon, trustee	do	12,100
	Do	do	34,399
	James H. Moore	do	425
	F. W. Gilley, jr., & Co	do	6,110
	Gregory & Ballou	do	1,100
	Hallgarten & Co	do	1,400
113	Harriott & Noyes	A. J. Poppleton	400
	W. T. Hatch & Sons	do	1,750
	Edward King, president	do 5,000	
	Do	do 8	
			5,008
	Horace Manuel & Co	do	100
	F. L. Mathez	do	18,100
	G. P. Morosini	do	20,041½
	Morton, Bliss & Co	do	1,802
	E. A. Quinn	do	1,000
	David Richmond	do	3,803
	Russell Sage	do	15,266
	A. G. P. Segur	do	9,405
	Vermilye & Co	do	3,261
	Isaac Thacher	do	2,514
	Moe S. Lott	do	4,400
	Aaron Hobart, jr	do	1,033
	E. Emmett	do	1,000
	John J. Cisco & Son	do	400
	G. M. Dodge	do	1,306
	Dominick & Dickerman	do	200
	Charles Head & Co	do	675
	William Heath & Co	do	600
	Brayton Ives & Co	do	1,000
	DeNeufville & Co	do	845
	C. E. Silkworth	do	2,000
	Scott & Leavitt	do	1,300
	Trask & Francis	do	1,184
	Whitehouse & Co	do	400
	Total		240,465

There were no votes cast against the said resolution, whereupon the said resolution was declared adopted, and ordered to be entered of record.

On motion of Mr. Poppleton, duly seconded, it was

Resolved, That a copy of the said articles of union and consolidation, together with the proceedings of the meeting ratifying the same, be filed with the secretary of the interior, and with the secretaries of state of the states of Nebraska, Kansas, and Colorado.

On motion of Mr. Poppleton, duly seconded, it was

Resolved, That the board of directors named in the said articles of union and consolidation, or their executive committee, be authorized to execute any and all instruments, and do any and all acts necessary to effectuate the purposes of this meeting, and carry out said articles of consolidation.

On motion of Mr. Vis, duly seconded, there being no further business, the meeting adjourned *sine die*.

JOSEPH W. GANNETT, *Chairman*.

Attest: A. J. POPPLETON, *Secretary*

114 F.

["A."]

ARTICLES OF UNION AND CONSOLIDATION.

Between the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, forming the Union Pacific Railway Company.

Articles of Union and Consolidation.

Whereas the Union Pacific Railroad Company, a corporation duly organized and existing under the act of Congress of July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military and other purposes," and the act of Congress of July 2, 1864, and various other acts amendatory of the foregoing, owns a line of railroad and telegraph extending from the Missouri river to Ogden, in the territory of Utah, a distance of 1,042 miles;

And whereas the Kansas Pacific Railway Company, described in the said act of Congress of July 1, 1862, as the Leavenworth, Pawnee & Western Railroad Company, the name whereof was afterward changed to that of the Union Pacific Railway Company, eastern division, and again subsequently changed to the Kansas Pacific Railway Company, is a corporation which is entitled to participate in the benefits of the said act of Congress of July 1, 1862, and of July 2, 1864, and the various acts amendatory thereof and relating thereto;

And whereas the said Kansas Pacific Railway Company owns and operates, as a branch of the Union Pacific Railroad, a rail-
115 road and telegraph line from a point connecting with the Missouri Pacific Railroad in Kansas City, in Missouri; thence

from the Missouri river, at the mouth of the Kansas river, on the south side thereof, with a spur from Wyandotte, in the state of Kansas, being from the east state line of Kansas to Denver, 639 miles in length, with a branch from a point on the main line near Lawrence to Leavenworth, 34 miles in length, in said state of Kansas, connecting at Denver with the Denver Pacific Railway, and is entitled to extend said railroad to the western boundary of the former territory of Kansas, to locate and construct branches of said railroad in the counties of the former territory of Kansas, adjacent to the line of said railroad as then located and defined by law;

And whereas the Denver Pacific Railway and Telegraph Company, under and by virtue of the said acts of Congress, and of an act of Congress approved March 3, 1869, entitled "An act to authorize the transfer of lands granted to the Union Pacific Railway Company, eastern division, between Denver and the point of connection with the Union Pacific Railroad to the Denver Pacific Railway and Telegraph Company, and to expedite the completion of railroads to Denver, in the territory of Colorado;" and of an act of Congress approved June 20, 1874, which, among other things, enacts that for all the purposes of the said act of July 1, 1862, and of the acts amendatory thereof, "The Denver Pacific Railway and Telegraph Company shall be deemed and taken to be a part and extension of the road of the Kansas Pacific Railroad to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyenne, as provided in the act of March 3, 1869." whereby and by force whereof the said Denver Pacific Railway and Telegraph Company is likewise entitled to participate in the benefits of the aforementioned acts of Congress of July 1, 1862, and July 2, 1864, and the various acts amendatory thereof and supplemental thereto and relating to the Pacific system of railroads; all of which, whether particularly herein described or not, are, for greater certainty in this behalf, referred to and made part hereof;

And whereas the said Denver Pacific Railway and Telegraph Company owns a line of road one hundred and six miles in length, extending from Denver, where it connects with the said Kansas Pacific Railway, to Cheyenne, where it connects with the Union Pacific Railroad;

And whereas in the aforesaid legislation of Congress applicable to the above mentioned three railroad companies it is provided that they may unite and consolidate their respective orgonizations;

And whereas each of the said above mentioned three companies, by corporate action duly and severally had, have resolved, pursuant to the authority in that behalf vested in them by law, to unite and consolidate their respective organizations into one company,
116 and have severally agreed to and with each other upon the terms of such union and consolidation, being the terms herein embodied and expressed:

Now this agreement and consolidation, made this the 24th day of January, A. D. 1880, between the said Union Pacific Railroad Com-

pany, party of the first part, the said Kansas Pacific Railway Company, party of the second part, and the said Denver Pacific Railway and Telegraph Company, party of the third part, witnesseth:

That the said parties have respectively agreed and do hereby severally agree to and with each other upon the following articles of union and consolidation of their respective organizations into one company, viz:

ARTICLE I. The said Union Pacific Railroad Company, the said Kansas Pacific Railway Company, and the said Denver Pacific Railway and Telegraph Company, in consideration of the premises, do hereby severally agree to and with each other to unite and consolidate, and do hereby unite, form, and consolidate their respective organizations, properties, and companies into one consolidated company, which shall succeed to, possess, and be entitled to receive from the Government of the United States all and singular the grants, benefits, immunities, guaranties, acts and things to be done and performed, and be subject to the same terms, conditions, restrictions, and requirements which the aforesaid three companies, respectively, at the date of this consolidation, are or may be entitled or subject to under the acts of Congress in that behalf, in place and substitution of said constituent companies so consolidated, respectively; and the said consolidated company assumes to and for itself all of the provisions of said acts of Congress, so far as applicable, relating or in any manner appertaining to said constituent companies, or either of them, including the power to sue and be sued in all courts of law and equity within the United States, whether federal or state, and the right of corporations organized under a law of the United States to remove causes from state to federal courts; and all of the provisions of the aforementioned acts of Congress and each of them, so far as in their nature applicable to the company hereby formed, shall apply thereto; it being the intent of the parties hereto and of these articles of union and consolidation to organize the company hereby formed under the said acts of Congress, and to make the said acts of Congress the charter or constituent acts of this company as fully as if the same were incorporated herein at large

ART. II. The name of the said consolidated company hereby formed shall be "The Union Pacific Railway Company."

ART. III. The capital stock of the said Union Pacific Railway Company shall be fifty millions seven hundred and sixty-two thousand three hundred ($50,762,300) dollars, (being the total aggregate amount of the outstanding stock of the three constituent companies,) which shall be divided into shares of one hundred dollars each; and it shall be issued in lieu of the stock of the
117 said constituent companies on the surrender thereof for that purpose by the respective holders thereof. Every stockholder in the Denver Pacific Railway and Telegraph Company and in the Union Pacific Railroad Company shall receive in place of every share of one hundred dollars surrendered a share of one hundred dollars in the new company; and every stockholder in the

Kansas Pacific Railway Company, the shares in which are only fifty ($50) dollars each, shall receive in place of every two shares of the stock at the time held by such stockholder in such company a share of the capital stock of the new corporation, upon surrendering to the new corporation the certificates of stock held by such stockholder.

ART. IV. The said new corporation shall, without unnecessary delay, issue certificates of stock, in such form as may by the board of directors be deemed advisable; and such board shall provide and adopt such rules and regulations as may be necessary and proper for the issuing and transfer of shares of stock of the said new corporation.

ART. V. The directors of the said Union Pacific Railway Company, to be elected by the stockholders at the annual meeting herein provided for, shall be fifteen in number, each of whom must be the *bona fide* owner of at least fifty shares of stock in the consolidated company. Such directors shall be chosen annually by the majority of the votes of the stockholders voting in person or by proxy at such election. And they shall continue to be directors until others are elected and qualified in their places. No person shall be a director unless he shall be qualified to vote for directors at the election at which he shall be chosen; and vacancies in the board of directors may be filled by the remaining directors at any regular meeting of the board. The directors of the said company shall annually, as soon as may be after their election, elect from their own number a president and vice-president, and shall also elect a treasurer and secretary.

ART. VI. The following-named persons shall be the first directors of said corporation, viz.: Fred L. Ames, Ezra H. Baker, Elisha Atkins, F. Gordon Dexter, Sidney Dillon, Russell Sage, Jay Gould, Solon Humphreys, David Dows, William L. Scott, Silas H. H. Clark, Thomas T. Eckert, John Sharp, Grenville M. Dodge, Carlos S. Greeley. The following-named persons shall be the first officers of the said corporation, viz.: President, Sidney Dillon; vice-president, Elisha Atkins; treasurer and secretary, Henry McFarland. The said directors and officers shall continue in office until their successors are chosen as provided in these articles.

ART. VII. Until otherwise duly provided, the annual meeting of the stockholders of the Union Pacific Railway Company shall be held at the company's office in the city of New York, on the first Wednesday following the fourth day of March in each year, between the hours of 10 o'clock A. M. and 4 o'clock P. M. of said day.
118 Notice of such meeting shall be given as may be prescribed by the by-laws. These provisions may be changed by the stockholders of the consolidated company at any annual meeting of the said stockholders.

ART. VIII. The parties hereto of the first, and second, and third parts hereby assign, transfer, set over, and convey unto the said Union Pacific Railway Company, the consolidated corporation hereby formed, all the rights, privileges, exemptions, and franchises of each of said companies, parties hereto, and all the property, real, per-

sonal and mixed, and all choses in action, debts on whatever account of, owing or belonging to either of said companies, and all claims, demands, property, rights of way, leases, leasehold interests, branches, iron rails, rolling stock, tools and implements, and property of every description, name, and nature belonging to either of the said companies, with the appurtenances, to be held, owned and controlled by the said consolidated corporation, its successors and assigns, as fully and completely, to all intents and purposes, as the respective parties hereto do or can now own, hold, use, enjoy, or control the same; and the parties hereto agree to execute and deliver to said consolidated corporation instruments of transfer, or assignments, or other instruments proper or necessary to carry out the covenants, conditions and provisions of this agreement. This assignment, transfer, sale and conveyance is made to the said consolidated corporation subject to all liens, charges and equities pertaining thereto.

ART. IX. Nothing in this agreement contained shall affect or prejudice any right otherwise existing of the consolidated company to make such further increase of stock or bonds as said consolidated company may by law be entitled to make, or restrict the amount of stock or bonds which such consolidated company is by law authorized to issue or make. Nor shall anything herein contained affect or impair the right to issue all unissued bonds under the Kansas Pacific consolidated mortgage of date May 1, 1879, wherein Jay Gould and Russell Sage are trustees, but such unissued bonds may, notwithstanding this consolidation, be issued in the same manner, and with the same effect in all respects as if these articles had not been adopted and executed.

And it is expressly agreed that the stockholders of the consolidated company shall have all the powers which would have been possessed by the stockholders of each constituent company if this consolidation had not been effected, to ratify, approve, and carry out any contracts made by either constituent company, and requiring the ratification or approval of its stockholders.

The power of the Union Pacific Railroad Company to issue all unissued bonds under the mortgage of July 1, 1879, wherein the Union Trust Company is trustee, is fully and completely reserved.

ART. X. The new company hereby formed does not herein assume any separate or individual liability for the outstanding debts, obligations, and liabilities of the respective constituent companies, whose several and separate existence as to third parties
119 shall, as respects such debts, obligations, and liabilities of every kind and nature, still continue, notwithstanding these articles of union and consolidation. But nothing herein contained shall prevent any valid debt, obligation, or liability of either constituent company from being enforced against the property of the proper constituent company, which by force of these articles becomes the property of the consolidated company. The corporate existence of the respective constituent companies shall not absolutely cease,

eo instanti, on the consummation of the union and consolidation herein provided for, but shall remain and continue so far as necessary to carry out the intent and purpose hereof.

ART. XI. These articles of consolidation shall go into effect, and the consolidated company hereby formed shall come into existence, upon the day on which a copy hereof is filed in the department of the interior, as provided in the legislation of Congress in that behalf.

ART. XII. The existing by-laws of the Union Pacific Railroad Company are hereby provisionally adopted, and shall apply to the company hereby formed until duly changed or repealed.

ART. XIII. All books, vouchers, records, instruments of title, cash, evidences of debt, contracts, and documents pertaining to the business or property of the said three companies, parties hereto, shall, without delay, be delivered to the proper officers of the consolidated company, and the said books, records, and papers shall be deemed and taken, as far as necessary, as the records and books of said consolidated company; and said books, records, vouchers, and papers shall be subject to the proper examination and inspection of all persons interested therein.

ART. XIV. These articles may be amended and modified from time to time, and in such manner as the holders of two-thirds of the stock of the consolidated company may direct or approve.

ART. XV. This agreement shall be executed on the part of the respective parties hereto by the proper officers, and under the corporate seals of said companies.

In witness whereof, the said parties have caused their respective corporate seals to be hereunto affixed, and the same to be attested by their respective presidents and secretaries, this the 24th day of January, A. D. 1880.

[SEAL.] THE UNION PACIFIC RAILROAD COMPANY,
BY SIDNEY DILLON, *President.*
Attest: HENRY MCFARLAND, *Secretary.*

[SEAL.] THE KANSAS PACIFIC RAILWAY COMPANY.
BY SIDNEY DILLON, *President.*
Attest: A. H. CALEF, *Secretary.*

THE DENVER PACIFIC RAILWAY & TELEGRAPH COMPANY,
[SEAL.] BY D. M. EDGERTON, *President.*
Attest: D. H. MOFFATT, JR., *Acting Secretary.*

The Union Pacific Railway Company has signified, and hereby signifies, its assent to and acceptance of the foregoing articles of union and consolidation, January 24, 1880.

[SEAL.] THE UNION PACIFIC RAILWAY COMPANY,
BY SIDNEY DILLON, *President.*

MEETING OF DIRECTORS.

Meeting of the directors of the Denver Pacific Railway and Tele-

graph Company, held at the company's office in the city of New York, January 24th, 1880, at 78 Broadway at 1 o'clock p. m., of which due notice was given by the secretary to each of the
120 directors by telegraph, and in writing to each and every director of the company.

Present: D. H. Moffat, jr., Sidney Dillon, D. M. Edgerton, W. S. Cheesman, C. S. Greeley, John D. Perry.

Mr. D. H. Moffat, on motion, appointed secretary.

The resignation of Mr. Jay Gould, dated the 10th day of January, as a director of this company, was read, and on motion accepted.

The president of the company read to the board a communication and report, dated January 16th, 1880, from G. M. Dodge and Solon Humphreys, in respect of a proposition to unite and consolidate with the Union Pacific Railroad Company and the Kansas Pacific Railway Company.

The president laid before the meeting for consideration articles of union and consolidation of this company with the Union Pacific Railroad Company and the Kansas Pacific Railway Company, into a new company, to be styled "The Union Pacific Railway Company," which articles were read at length; dated January 24th, 1880; copy annexed.

After consideration, on motion of Mr. D. H. Moffatt, jr., seconded by Mr. W. S. Cheesman, it was voted that the president of this company be directed to execute on behalf of this company the said articles, under the corporate seal, the same to be attested by the secretary of this meeting, and also that the president execute any other necessary papers, contracts and deeds, and do all other acts necessary to carry the same into effect.

Carried unanimously.

On motion of Mr. D. H. Moffatt, jr., seconded by Mr. W. S. Cheesman, it was resolved: That whereas this company has united and consolidated with the Union Pacific Railroad Company and the Kansas Pacific Railway Company, into the Union Pacific Railway Company, that the stock-books be closed.

Carried unanimously.

Adjourned until 4 o'clock p. m. this day, at the same place.

(Signed) D. H. MOFFATT, JR., *Secretary pro tem.*

I do hereby certify that the foregoing is a true and correct copy from the records of the proceedings had at a meeting of the directors of Denver Pacific Railway and Telegraph Company, held on the 24th day of January, A. D. 1880, at 78 Broadway, in the city of New York.

Witness my hand and the seal of the company, this seventeenth day of May, A. D. 1880, at Denver, Colorado.

[OFFICIAL SEAL.] R. R. McCORMICK,
Secretary Denver Pacific Rly. & Tel. Co.

121 ADJOURNED MEETING.

January 24, 1880, 4 o'clock.

Present as before.

Resolved, That the president be authorized to call any special meeting or meetings of the stockholders that may be deemed necessary or desirable to consummate the articles of consolidation.

(Signed) DAVID H. MOFFATT, JR.,
Secretary pro tem.

I do hereby certify that the foregoing is a true and correct copy from the records of the Denver Pacific Railway and Telegraph Company in my office, of a certain resolution adopted by the board of directors of said company, at an adjourned meeting held at 4 o'clock p. m. on the 24th day of January, A. D. 1880, at 78 Broadway, N. Y.

Witness my hand and the seal of the company. Done at Denver, Colorado, this 20th day of May, A. D. 1880.

[OFFICIAL SEAL.] R. R. McCORMICK,
Secretary Denver Pacific Rly. & Tel. Co.

[Copy "C."]

STOCKHOLDERS' RATIFICATION AND APPROVAL.

Know all men by these presents, that we, the undersigned persons and parties holding and representing the shares of the capital stock of the Denver Pacific Railway and Telegraph Company, now issued and outstanding to the extent set forth opposite our respective names, have ratified and approved, and by these presents do ratify and approve the articles of union and consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway, and the Denver Pacific Railway and Telegraph Company, into the Union Pacific Railway Company. Dated the 24th day of January, A. D. 1880, and hereby referred to for greater certainty and made part hereof.

Names.	*Shares.*	*Residence.*
Sidney Dillon,	39,986 (trustee)	N. Y.
D. H. Moffat, jr.,	One,	Denver, Col.
C. S. Greeley,	One,	St. Louis.
W. S. Cheesman,	One,	Denver.
D. M. Edgerton,	One,	St. Louis.
Wm. J. Palmer,	One,	Colorado.
G. M. Dodge,	One,	New York.
Fred'k L. Ames,	One,	No. Easton, Mass.

122 [Copy "D."]

Know all men by these presents, that we, the undersigned persons and parties holding and representing the shares of the capital stock of the Denver Pacific Railway and Telegraph Company, now issued and outstanding to the extent set forth opposite our respective names,

have ratified and approved, and by these presents do ratify and approve the articles of union and consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, into the Union Pacific Railway Company. Dated the 24th day of January, 1880, and hereby referred to for greater certainty, and made part hereof.

Names.	*No. of Shares.*	*Residence.*
John P. Deveraux,	One,	Lawrence, Kas.
Adolphus Meier,	One,	St. Louis, Mo.
Sidney Dillon,	One,	New York.
A. H. Calef,	One,	"
Jay Gould,	One,	"

D. H. Moffatt, jr., being duly sworn, doth depose and say: That he was duly elected vice-president of the Denver Pacific Railway and Telegraph Company, and that his successor has never been chosen, and that he was appointed the acting secretary of the meeting of the directors of said company, hereafter referred to, held on the 24th day of January, 1880; that the printed instrument hereto annexed marked "A," and made part hereof, is a true copy of the original articles of union and consolidation; that the said articles of union and consolidation were submitted to the action of a corporate meeting of the directors of the Denver Pacific Railway and Telegraph Company held January 24th, 1880, at which it was "voted that the president of this company be directed to execute, on behalf of this company, the said articles under its corporate seal, the same to be attested by the secretary of this meeting;" that deponent was the secretary of such meeting, and that the said articles were executed as directed by the said vote. And deponent further states the same have been ratified and approved by the written assent of every shareholder or stockholder in said company; that the instruments hereto annexed, marked respectively "C" and "D," are true copies of the original instruments, and that the same were duly signed by the several shareholders.

DAVID H. MOFFATT, JR.

THE STATE OF NEW YORK, } ss.
City of New York. }

Subscribed and sworn to before me by David H. Moffatt, jr., the 14th day of May, A. D. 1880. Witness my hand and official
123 seal as commissioner of deeds, duly appointed for the state of Colorado, hereto affixed.

[OFFICIAL SEAL.]

A. H. CALEF,
Commissioner of Deeds for state of Colorado.

A. H. CALEF, being duly sworn, doth depose and say: That I know the contents of the foregoing affidavit of David H. Moffatt, jr., and that the same is true; and I do further state that the instruments marked "C" and "D" are true copies of the originals, to my

have ratified and approved, and by these presents do ratify and approve the articles of union and consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, into the Union Pacific Railway Company. Dated the 24th day of January, 1880, and hereby referred to for greater certainty, and made part hereof.

Names.	*No. of Shares.*	*Residence.*
John P. Deveraux,	One,	Lawrence, Kas.
Adolphus Meier,	One,	St. Louis, Mo.
Sidney Dillon,	One,	New York.
A. H. Calef,	One,	"
Jay Gould,	One,	"

D. H. Moffatt, jr., being duly sworn, doth depose and say: That he was duly elected vice-president of the Denver Pacific Railway and Telegraph Company, and that his successor has never been chosen, and that he was appointed the acting secretary of the meeting of the directors of said company, hereafter referred to, held on the 24th day of January, 1880; that the printed instrument hereto annexed marked "A," and made part hereof, is a true copy of the original articles of union and consolidation; that the said articles of union and consolidation were submitted to the action of a corporate meeting of the directors of the Denver Pacific Railway and Telegraph Company held January 24th, 1880, at which it was "voted that the president of this company be directed to execute, on behalf of this company, the said articles under its corporate seal, the same to be attested by the secretary of this meeting;" that deponent was the secretary of such meeting, and that the said articles were executed as directed by the said vote. And deponent further states the same have been ratified and approved by the written assent of every shareholder or stockholder in said company; that the instruments hereto annexed, marked respectively "C" and "D," are true copies of the original instruments, and that the same were duly signed by the several shareholders.

DAVID H. MOFFATT, JR.

THE STATE OF NEW YORK, } *ss.*
City of New York. }

Subscribed and sworn to before me by David H. Moffatt, jr., the 14th day of May, A. D. 1880. Witness my hand and official
123 seal as commissioner of deeds, duly appointed for the state of Colorado, hereto affixed.

[OFFICIAL SEAL.]

A. H. CALEF,
Commissioner of Deeds for state of Colorado.

A. H. CALEF, being duly sworn, doth depose and say: That I know the contents of the foregoing affidavit of David H. Moffatt, jr., and that the same is true; and I do further state that the instruments marked "C" and "D" are true copies of the originals, to my

knowledge, and that the signatures to the originals are genuine, and the persons so signing the same constitute all of the shareholders of the Denver Pacific Railway and Telegraph Company.

A. H. CALEF.

THE STATE OF NEW YORK, *City of New York,* } *ss.*

Subscribed and sworn to before me this 14th day of May, A. D. 1880. Witness my hand and seal notarial, hereto set the day above written.

[OFFICIAL SEAL.] JAMES M. HAM,
Notary Public, Kings county, N. Y.

Certificate filed in N. Y. county.

I, D. M. Edgerton, the president of the Denver Pacific Railway and Telegraph Company, do hereby certify, and upon oath state that, at a meeting of said company, held January 24, 1880, it was voted by the directors of said company to consolidate with the Union Pacific Railroad Company and the Kansas Pacific Railway Company, and thereby form a new company called the Union Pacific Railway Company; that the printed instrument hereto attached is a true copy of the articles of consolidation, and that the same were signed and executed by order of the board of directors of the said Denver Pacific Railway and Telegraph Company, and attested by the corporate seal of said company; that every shareholder of said company has in writing assented to and ratified in writing the said articles of union and consolidation; that true copies of such written assent and ratification are hereto annexed, marked "C" and "D."

In testimony whereof, I have caused this certificate to be attested by the corporate seal of said company, and have signed the same as the president of said company.

[OFFICIAL SEAL.] D. M. EDGERTON,
President of the Denver Pacific Railway & Telegraph Co.

Attest: R. R. McCORMICK,
Secretary.

THE STATE OF MISSOURI, *City of St. Louis,* } *ss.*

The foregoing certificate was subscribed and sworn to before me, by the said D. M. Edgerton, this 18th day of May, A. D. 1880.
124 Witness my hand and seal official, hereto affixed the date above written. (My term ends February 18, 1883.)

[OFFICIAL SEAL.] C. D. GREEN, JR.,
Notary Public.

STATE OF COLORADO, *Secretary's office,* } *ss.*

I, Norman H. Meldrum, secretary of state of the state of Colorado,

do hereby certify that the foregoing is a full, true and complete transcript of the articles of union and consolidation of the Denver Pacific Railway and Telegraph Company, the Union Pacific Railroad Company, and the Kansas Pacific Railway, into the Union Pacific Railway Company, which was filed in this office the second day of August, A. D. 1880, at 2 o'clock 45 minutes p. m., and admitted to record.

In testimony whereof, I have hereunto set my hand and affixed the great seal of state, at the city of Denver, this third day of August, A. D. 1880.

[SEAL.] N. H. MELDRUM,
Secretary of State.

DENVER PACIFIC RAILWAY AND TELEGRAPH COMPANY.

DENVER, *September* 30, 1880.

At a meeting of the stockholders of the Denver Pacific Railway and Telegraph Company, held at the office of the Union Pacific Railroad Company, at Denver, Colorado, on the 30th day of September, 1880, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of said day, said meeting being held in pursuance of the call therefor and notice thereof given, as appears by the notice and call for such meeting filed in the office of the secretary of the said Denver Pacific Railway and Telegraph Company, which said notice was in the words and figures following, to wit:

"PUBLIC NOTICE.

"The undersigned, president, directors and stockholders of the Denver Pacific Railway and Telegraph Company, do hereby call a special meeting of the stockholders of said company, to be held at the city of Denver, in the state of Colorado, on the 30th day of September, A. D. 1880, at the office of the Union Pacific Railway Company, in Denver, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of said day, for the purpose of determining by vote of the corporation, through its stockholders, its assent to or dissent from the articles of union and consolidation between the said company, the Kansas Pacific Railway Company, and the Union Pacific Railroad Company, of date January 24, 1880. A copy of said articles of union and consolidation has been duly filed with the secretary of the interior, and with the secretary of state of Colorado, to which reference may be made.

"Said articles of union and consolidation have been approved by the directors of the said Denver Pacific Railway and Telegraph Company at a corporate meeting duly assembled January 4, 1880, and the same have been separately assented to by every stockholder of
125 the said Denver Pacific Railway and Telegraph Company; but it is deemed proper that the said special meeting of the stockholders be called, that such assent be manifested by a recorded vote of the stockholders, at a meeting of the company to be held for that pur-

pose at the city of Denver, on the 30th day of September, A. D. 1880, at the place and between the hours hereinbefore stated.

D. M. EDGERTON,
President Denver Pacific Railway and Telegraph Company.
DAVID H. MOFFATT, JR.,
Vice-President.

Sidney Dillon,	one share,
John P. Devereux,	one share,
C. S. Greeley,	one share,
D. M. Edgerton,	one share,
D. H. Moffatt, jr.,	one share,
Jay Gould,	one share,
Frederick L. Ames,	one share,
W. S. Cheesman,	one share,
Directors of said Company.	
Frederick L. Ames,	one share,
G. M. Dodge,	one share,
A. H. Calef,	two shares,
A. H. Calef, treas.,	two shares,
Jay Gould,	10,001 shares,
D. H. Moffatt, jr.,	one share,
D. M. Edgerton,	one share,
C. S. Greeley,	one share,
John P. Devereux,	one share,
Sidney Dillon,	one share,
Jay Gould and Russell Sage, Trustees,	29,986 shares.
Adolphus Meier,	one share,
W. J. Palmer,	one share,
Stockholders of said Company.	

R. R. McCORMICK, *Secretary.*"

And by the affidavits of Herman Silver and John Brisben Walker, that said notice had been published in the Denver *Daily Tribune* and in the *Inter-Ocean*, which affidavits were in the words and figures following, to wit:

"STATE OF COLORADO, } ss.
Arapahoe County, }

"Herman Silver, being first duly sworn, says he is the secretary and treasurer of the Denver *Tribune*, a daily paper published in the city of Denver; that the annexed notice was published in said Denver *Tribune* for thirty consecutive days, excluding Monday of each week; and that the first publication of said notice was on August 6th, 1880, and the last publication was September 5th, 1880.

H. SILVER,
Secretary and Treasurer Tribune Pub. Co.

"Subscribed and sworn to before me this 27th day of September, A. D. 1880.

[SEAL.] CHAS. R. RAYMOND,
Notary Public."

"STATE OF COLORADO, } ss.
County of Arapahoe, }

"John Brisben Walker, being first duly sworn, says he is one of the proprietors of the *Inter-Ocean*, and that the said *Inter-Ocean*
126 is a weekly newspaper, published in the city of Denver, state of Colorado; that the notice hereto annexed was published in said *Inter-Ocean* for four consecutive issues of said *Inter-Ocean*, commencing with August 14th, 1881.

JOHN BRISBEN WALKER.

Sworn and subscribed before me this twenty-seventh day of September, A. D. 1880.

[SEAL.] GABRIELL NETTER,
Notary Public Arapahoe county, Col."

And it further appears by certificate of R. R. McCormick, secretary of said Denver Pacific Railway and Telegraph Company in words and figures following, to wit:

"I, R. R. McCormick, secretary of the Denver Pacific Railway and Telegraph Company, do hereby certify that at least twenty days prior to the 30th day of September, A. D. 1880, I mailed to each and every of the stockholders of said company printed slips of a notice of the meeting of the stockholders to be held in Denver, the 30th day of September, A. D. 1880, which said notice is the same as that referred to in the affidavit of John B. Walker and Herman Silver, and a copy of the notice signed by the president and directors of said company, calling said meeting; that such notices were sent by mail to the address of said stockholders by depositing the same in the post office and prepaying the postage thereon at Denver City, Col.,"

that notice of such meeting had been sent by mail to all of the stockholders of said company.

The following proceedings were had:

The stockholders assembled at the time and place mentioned, and organized by electing D. H. Moffat, jr., chairman, and R. R. McCormick secretary of said meeting.

The chairman explained the object of the meeting to be to determine by vote of the stockholders of the said Denver Pacific Railway and Telegraph Company their assent to or dissent from the articles of union and consolidation between the Kansas Pacific Railway Company, the Union Pacific Railroad Company, and the Denver Pacific Railway and Telegraph Company, of date January 24th, 1880, a copy of which has been duly filed with the secretary of the interior,

and the original of which was presented to the shareholders as aforesaid.

On motion of Mr. Willard Teller, duly seconded, it was voted that Mr. R. R. McCormick and Mr. E. W. Rollins be appointed tellers, to examine and report to the meeting the names of stockholders present, in person or by proxy, and the number of shares held by them respectively in the said Denver Pacific Railway and Telegraph Company, as shown on the books of the company on the 30th day of September, 1880, and who are entitled to vote at this meeting.

And therefore the said McCormick and Rollins reported that there were then presnt and entitled to vote, shares of the corporate stock of said company as follows, to wit:

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	Shares.
In person:	
D. H. Moffatt, jr	1
By William Teller, proxy:	
Sidney Dillon	1
Jay Gould	10,000
Jay Gould and Russell Sage, trustees	29,986
G. M. Dodge	1
A. H. Calef	4
C. S. Greeley	1
By E. W. Rollins, proxy:	
Frederick L. Ames	1
John P. Devereux	1
D. M. Edgerton	1
Adolphus Meier	1
Shares	39,999

On motion, the report of the committee was received and adopted.

On motion of Mr. Teller, duly seconded, it was—

Resolved, That the said articles of union and consolidation, dated January 24th, 1880, the original of which has been presented and a copy of which is on file in the office of the secretary of the interior, as above stated, whereby the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company have severally agreed to unite and consolidate into a new company, called and known as The Union Pacific Railway Company, be, and the same are hereby, ratified and approved.

Which resolution was adopted by a vote of the following shares of stock of the said Denver Pacific Railway and Telegraph Company, standing on the books of said company on the 30th day of September, 1880, to wit:

(The chairman appointed R. R. McCormick and E. W. Rollins tellers of election.)

Names.	*Proxies.*	*Number of shares.*
Sidney Dillon	Willard Teller	1
Jay Gould and Russell Sage, trustees	do	29,986
Jay Gould	do	10,001
C. S. Greeley	do	1
G. M. Dodge	do	1
A. H. Calef	do	4
Frederick L. Ames	E. W. Rollins	1
John P. Devereux	do	1
D. M. Edgerton	do	1
Adolphus Meier	do	1
D. H. Moffat, jr		1
		39,999

We, the undersigned, tellers of election, do hereby certify that the vote on the foregoing resolution was: For adoption, 30,999 shares; against adoption, none.

(Signed) E. W. ROLLINS.
R. R. McCORMICK.

127 Whereupon the chairman declared said resolution adopted, and ordered the same to be recorded.

Resolved, That the secretary of this meeting be, and he is hereby, instructed to furnish the president of the consolidated companies, Union Pacific Railway, a certified copy of the proceedings of this meeting.

On motion, the meeting adjourned *sine die*.

I, R. R. McCormick, secretary of the Denver Pacific Railway and Telegraph Company, do hereby certify that the above and foregoing is a true and correct copy from the records of the proceedings had at the meeting of the stockholders of the said railway and telegraph company, held in the city of Dever, state of Colorado, on the 30th day of September, A. D. 1880.

Witness my hand and the seal of the said railway and telegraph company this 20th day of October, A. D. 1880.

R. R. McCORMICK,
Secretary of Denver Pacific Railway and Telegraph Company.

G.

PROCEEDINGS OF THE KANSAS LEGISLATURE IN 1881, WITH REFERENCE TO THE CONSOLIDATION.

In 1881 the judiciary committee of the senate of Kansas investigated the question of the validity of the consolidation hereinbefore set out at length. The resolution authorizing such investigation, and the conclusion arrived at by the majority and minority of the

committee, are herewith given for the purpose of making the history of this question complete. The majority report, written by the Hon. H. C. Sluss, one of the ablest lawyers in Kansas, finds that the consolidation is valid, and is of itself an unanswerable argument in favor of its validity. The minority report, written by Hon. S. O. Thacher, also a very able lawyer, contains the views of those who deny the validity of the consolidation, and has already been answered in the argument of this case.

AMENDMENT TO HOUSE CONCURRENT RESOLUTION NO. 21, AS RECOMMENDED BY THE COMMITTEE.

Whereas, The Kansas Pacific Railway Company, a railroad corporation created and organized under the laws of the territory of Kansas, known at the time of its organization as the Leavenworth, Pawnee & Western, and subsequently as the Kansas Pacific, eastern division, and still later as the Union Pacific, Kansas division, and the Union Pacific Railroad Company, created under the act of Congress, have heretofore attempted a consolidation, and pursuant to said attempted consolidation the Kansas Pacific Railway Company has ceased to do business as a railroad company, and the consolidated company, under the name of the Union Pacific Railroad Company, is now exercising all the franchises, privileges, and immunities of the Kansas Pacific Railway Company, and has removed from the state all of its general offices, all of which acts are believed to be in disregard to the laws of the state of Kansas, and to the end that the law may be enforced—

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Resolved by the House of Representatives, the Senate concurring therein:

First. That the attorney general be directed to examine into the alleged consolidation of the Union Pacific Railroad Company with the Kansas Pacific Railway Company, and ascertain its terms and conditions, and state whether the consolidated company has been legally formed under the laws of this state, or any law paramount to the laws of this state.

Second. That he state whether in his opinion the consolidated company is amenable to the laws of this state; if so, to what extent, and in what particulars.

Third. That he state whether in his opinion the said Union Pacific Railroad Company has usurped rights and franchises, or is exercising corporate rights and franchises in this state not authorized by law, or has in any manner failed to comply with or has violated any laws of this state; if so, in what respect.

Fourth. That he state whether in his opinion the Kansas Pacific Railway Company is in law an existing corporation of this state, or whether it has become an extinct corporation and the state has lost jurisdiction over the property once belonging to said corporation. If he state that it has lost such jurisdiction, he must state how and in what manner that end has been reached.

Fifth. That he state what remedies are left to the state in respect to each of the matters above referred to.

Sixth. That he also state what will be the probable expense to the state for counsel in case actions are instituted in the above matters by the state.

Seventh. That he make such report within a reasonable time, not to exceed three months from this date, and file the same with the governor of the state, who shall transmit the same with his message to the next legislature. Nothing herein shall prevent the publication in the newspapers of the state of said report as soon as made.

129 MAJORITY REPORT OF SENATE COMMITTEE ON HOUSE CONCURRENT RESOLUTION NO. 21.

Mr. PRESIDENT: The majority of the committee on judiciary beg leave to say:

That the purpose of this resolution is to cause an action to be prosecuted by the state against the Kansas Pacific Railway Company, based upon the fact that said railway company has voluntarily become consolidated with the Union Pacific Railroad Company, and become a part of the Union Pacific Railroad. The question of the adoption of this course by the state involves two very important considerations: First, Have we a clear case? Second, Is it sound policy to prosecute it?

It is not proposed to institute this suit by reason of any refusal of either the original or consolidated railroad company to submit to any reasonable regulation of law, but solely on account of said consolidation. We are prepared to believe that the people of Kansas do not desire to engage in litigation with any of its great lines of railway, unless the state is clearly in the right, both in law and in equity, and the real interests of the people of the state render such course reasonably necessary.

The questions of law and fact arising in such litigation must be decided by a court of justice, composed of judges supposed to be entirely impartial and uninfluenced by any wave of public clamor, and fearless of that shadowy something popularly styled "the growing power of corporations." The examination which we have been able to give the subject shows us that the foundation of what is known as the Kansas Pacific Railway, was the "Leavenworth, Pawnee & Western Railroad Company," the charter of which was originally granted by a legislature of the territory of Kansas, at a session held in the year 1855, and authorized the building of a railroad from the city of Leavenworth, by the way of Pawnee, to the western limit of the then territory, under which charter it appears an organization was perfected in January, 1857.

Under its charter the company was given unlimited authority to receive loans and donations of land from the United States to aid in the construction of the proposed line of railway.

On the first day of July, 1862, an act of Congress was approved,

creating the Union Pacific Railroad Company, and authorizing the construction of a system of railways from the Missouri river to the Pacific ocean, and making valuable loans and grants of land to the several companies by the act authorized to participate in building said system of railways.

Among the provisions of that act was one to the effect "that the Leavenworth, Pawnee & Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line from the Missouri river, at the mouth of the Kansas river, on the
130 south side thereof, so as to connect with the Pacific Railroad of Missouri, to the aforesaid point on the hundredth meridian of longitude west from Greenwich as herein provided, upon the same terms and conditions in all respects as are provided in this act for the construction of the railroad and telegraph line first mentioned (meaning the Union Pacific Railroad Company.")

The act of Congress contained the further provision, "That at any time after the passage of this act all of the railroad companies named herein and assenting hereto, or any two or more of them, are authorized to form themselves into one consolidated company."

Afterwards an amendatory act was passed by Congress, approved July 2d, 1864, containing further and fuller provisions for the construction of said system of railways.

This latter act gave to the Leavenworth, Pawnee & Western Railroad Company additional and valuable rights and privileges, and also prescribed the course of a portion of its route, so as to compel its building by the way of Lawrence and Topeka; and among other things, provided—

"That any two or more of the companies authorized to participate in the benefits of this act are hereby authorized at any time to unite and consolidate their organizations as the same may or shall be, upon such terms and conditions, and in such manner as they may agree upon, and as shall not be incompatible with this act, or the laws of the state or states in which the roads of such companies may be, and assume and adopt such corporate name and style as they may agree upon."

The Leavenworth, Pawnee & Western Railroad Company accepted all the loans, gifts and grants which our government gave it by these acts of Congress, and was thereby, and only thereby, enabled to build and complete the road. In other words, the government of the United States built and completed the great work which it is now proposed the state of Kansas, which did not build it, shall raise its battle-ax and chop in pieces.

It ought to be a sufficient answer to the real controversy now before us to ask, Who ought in justice and fairness to have primary and supreme control of the agents intrusted with the management of this national highway—the government of the Nation which built it, or the state of Kansas, which sat in its infancy and implored the government to open its treasury, extend its credit, and divide its do-

main for the building of this highway, in order that Kansas might become a great state?

But, however this may be, it is certainly true that the consolidation now sought to be attacked was expressly authorized by the act of Congress.

But the question arises—and it is the only question—had Congress the power to authorize this consolidation?

We are clearly of the opinion that it had. In our judgment, it derives this power from the provision of the federal constitution delegating to Congress power to regulate commerce among
131 the states. It is not our purpose, nor do we conceive it to be our duty, to enter into a labored argument to sustain this opinion.

It is clearly settled that Congress has power to create a corporation when it is an appropriate means of exercising any of the powers given by the constitution to the government. Within the sphere of any distinct power given by the constitution, the authority of Congress is supreme.

Congress is given power to regulate commerce among the states. A railway corporation may be made an appropriate instrument of commerce among the states. The creation of a railway corporation, and providing for the construction of a railroad, is an appropriate means of exercising the power to regulate commerce among the states.

But we cannot better or more forcibly express our views upon this important question than by incorporating the words of that eminent jurist, Mr. Justice Miller, of the Supreme Court of the United States. He says:

"The power to regulate commerce is the power to regulate the instruments of commerce. In the case of *Cooley* v. *The Board of Wardens*, the court says, that 'the power to regulate navigation is the power to prescribe rules in conformity with which navigation must be carried on. It extends to the persons who conduct it, as well as to the instruments used.' Navigation is here spoken of as one of the subjects of legislation included in the power to regulate commerce. In this view of the subject, Congress has passed statutes regulating steamboats, their construction, equipment, officers and crews, prescribing qualifications of pilots and engineers, limiting the number of passengers they must carry, and prescribing the signals they shall use in passing each other; in short, it has established a minute code for building and navigating those vessels. The right to do this depends wholly on the power vested in Congress to regulate commerce, and has never been disputed.

"Navigation, however, is only one of the elements of commerce. It is an element of commerce because it affords the means of transporting passengers and merchandise, the interchange of which is commerce itself. Any other mode of effecting this would be as much an element of commerce as navigation. When this transportation or interchange of commodities is carried on by land, it is

commerce, as well as when it is carried on by water; and the power of Congress to regulate it is as ample in the one case as in the other. The 'commerce among the states,' spoken of in the constitution, must, at the time that instrument was adopted, have been mainly of this character; for the steamboat, which has created our great internal commerce on the rivers, was then unknown.

"Another means of transportation, equal in importance to the steamboat, has also come into exercise since the constitution was adopted. By it merchandise is transported across states and kingdoms in the same vehicle in which it started. The railroad now shares with the steamboat the monopoly of the carrying trade. The one has, with great benefit, been subjected to the control of salutary congressional legislation. Is there any reason why the other should not be? However this question may be answered in regard to that commerce which is conducted wholly within the limits of a state, and which is therefore neither foreign commerce nor commerce among the states, it seems to me that when these roads become parts of the great highways of our Union, acting an important part in a commerce which embraces many states, and destined, as some of these roads are, to become the channels through which the nations of Europe
132 and Asia shall interchange their commodities, there can be no reason to doubt that to regulate them is to regulate commerce both with foreign nations and among the states, and that to refuse to do this is a refusal to discharge one of the most important duties of the federal government. As already intimated, the shackles with which the different states fettered commerce in their selfish efforts to benefit themselves at the expense of their confederates, was one of the main causes which led to the formation of our present constitution. The wonderful growth of that commerce since it has been placed exclusively under the control of the federal government, has justified the wisdom of our fathers. But are we to remit the most valuable part of it to the control of the states through whose territories it must be conducted, and to all the vexations and burdens which they may impose? And must all this be permitted because the carrying is done by a method not thought of when the constitution was framed?

"For myself, I must say that I have no doubt of the right of Congress to prescribe all needful and proper regulations for the conduct of this immense traffic, over any railroad which has voluntarily become part of any of those lines of interstate communication, or to authorize the creation of such roads, when the purposes of interstate transportation of persons and property justify or require it."

Then, if Congress has power to create a railway corporation as an instrument of commerce among the states, which Judge Miller expressly affirms, how can it be said that it may not set the seal of its power upon existing railway corporations to accomplish the same end? If Congress may authorize the consolidation of the property and capital of individuals (which is the real effect of organizing a corporation) as an instrument or means of interstate commerce, on

the same ground it may authorize the consolidation of the property and capital of existing corporations (which are but several aggregations of the property and capital of individuals) for the same purpose.

But this is not all. If we authorized the proposed action to be instituted, we shall be met in its prosecution by many other serious questions, among which we mention the following:

As we have said, the act of the territorial legislature incorporating the Leavenworth, Pawnee & Western Railroad Company contained the provision that the company might accept and hold loans, gifts, grants and donations of land, money or bonds, in any quantity, from the United States. The act nowhere contained any provision limiting or prescribing the terms or conditions on which the company might accept such loans, gifts or donations from the United States. The company was, therefore, impliedly authorized to accept such loans, gifts and donations, upon such terms and conditions and for such purposes as Congress might prescribe, and to submit to such regulations and accept such powers as Congress might impose, in order to effectuate the object it should have in view in making such loans, gifts and donations on behalf of the United States.

Who can say Congress would have made the gifts and donations it did if the charter had contained provisions preventing Congress taking control of the operations, as well as the destiny of the road?

Is it to be said that Congress had not the power to require
133 the road to be built from Kansas City, instead of from Leavenworth? Or by Lawrence and Topeka, instead of miles away from them? We have not heard it so said. Then, we say, it becomes a serious question if these things, including the condition that all these corporations might be consolidated into one as a more efficient instrument of interstate commerce, to secure which was the object of the action of Congress, do not constitute a condition on which Congress and the company have acted, entering into the compact, and which the state cannot annul, if it so desired.

Again: Prior to the passage of the act of Congress, the act of March 5, 1862, was passed by the legislature of Kansas. The language of that act is peculiar and significant. It provided that "Any railroad company now organized, or which shall hereafter organize under the laws of Kansas, may, at any meeting regularly called of all the stockholders thereof, by vote of persons holding a majority of the stock of such company, unite or consolidate it with any other company or companies now organized, or which may hereafter organize under laws of the United States, or any state or territory;" and further provided "that any companies thus united for the purpose of the construction of a railroad and branches thereof, from the western boundary of the state of Missouri to the Pacific ocean, shall, upon equal terms, have the right to run through cars upon said Pacific Railroad as far and as fast as the same is completed from the points on the Missouri river from which said roads or branches shall start." When it is remembered that this act was passed at the

very time time when the Pacific Railroad act was pending and under discussion in Congress, and at a time when there was no railroad company in existence organized under the laws of the United States, and no company formed to construct a railroad from the western boundary of Missouri to the Pacific ocean, the conclusion is irresistible that it was passed in anticipation that the act of Congress should provide authority for the consolidation of these several companies; and more than all, that this very provision authorizing such consolidation was considered by Congress as a vital condition upon which the grants of subsidy to aid in building the road should be made. The act of March 5, 1862, may therefore be considered as a valid grant of the consent of the state to Congress to provide for the consolidation, and to the company to make such consolidation. That the consideration to the state for giving such consent was sufficient and ample, there can be no question. Such consent being thus given upon sufficient consideration, and being accepted and acted upon by Congress in granting the subsidy, and by the company in accepting the grant, and entering upon building the road, it becomes a serious question whether the state is not prohibited from withdrawing that consent, under the provision of the federal constitution which declares that no state shall pass any law impairing the
134 obligation of contracts. There is strong reason as well as judicial authority for saying it cannot be done.

The repeal of the act of March 5, 1862, therefore, did not affect the power of the company to enter into the consolidation. Upon the question of policy involved in the passage of this resolution, we do not suppose it was expected of this committee to express an opinion. It is urged that by the consolidation the company has attempted to place itself beyond the jurisdiction of the legislature and courts of our state. However this may be, it is apparent that the consolidation, being the creature of the law, can contain no stipulation or provision inconsistent with the provisions of the law by which it is authorized, and any such stipulations contained in the articles of consolidation cannot be successfully pleaded either in resistance to any law of the state, or the jurisdiction of our courts. It has been repeatedly held by the Supreme Court of the United States, that where two or more corporations organized under the laws of different states are consolidatod into one company, such consolidated company has all the rights and becomes subject to all the liabilities held by the original companies in the respective states under the laws of which they were organized. If the company has passed beyond the jurisdiction of the legislature and the courts of Kansas, it is by reason of the fact of such consolidation, and not by reason of the presence or absence of provisions to that effect in the articles of consolidation, and the same would result by reason of the fact of the company being an instrument and means of interstate commerce. It is then more reasonable to suppose that any provisions of the kind referred to cannot be enforced, than that the consolidation is rendered void *in toto* by reason of such provisions. We are of the

opinion that there can be no practical advantage result to the state of Kansas in having it adjudged that the Kansas Pacific Railway Company has forfeited its charter, and maintain that it would be better to treat the company as a citizen of this state and enforce obedience to our laws. If in fact and law it is a citizen, we can compel obedience to our laws. If it is not, then we certainly cannot succeed in the proceeding contemplated by this resolution.

It is well known that it has been the settled policy of the state to encourage and if possible secure the end which at last has been brought about by means of this consolidation, so that the products of Kansas might be placed in the markets of the west on terms to compete with the producers of Iowa, Nebraska, and northern Missouri. This result having been attained in the only practical way in which it could be permanently attained, shall the state now turn about and say, We want and will have separate and dissevered lines of railway under different management, and charging different and independent rates for the transportation of our products to the doors of the consumers in the vast region occupying the western half of the continent?

135 For the reason that the step proposed by this resolution is one of serious consequence, and should not be taken except upon the most satisfactory showing of law and fact and justice in its favor, we believe a thorough and impartial investigation should be made by the attorney general into all the questions involved, and that action be taken only after a thorough understanding of our rights and duties in the premises. To this end, therefore, we recommend that the accompanying substitute be adopted.

Respectfully submitted.

H. C. SLUSS,
W. B. GLASSE,
W. P. HACKNEY,
A. L. PATCHIN,
AARON S. EVEREST,
Of the Senate Committee on Judiciary.

MINORITY REPORT OF SENATE COMMITTEE ON HOUSE CONCURRENT RESOLUTION NO. 21.

Mr. PRESIDENT: Your committee have had under consideration house concurrent resolution No. 21, relating to a *quo warranto* action against certain railroad companies therein named.

At the hearing of the same, your committee was attended by Hon. J. P. Usher and Hon. A. L. Williams, attorneys for said companies, as well as by the managing officers of the Union Pacific Railway Company, and have had the benefit of a very full and able argument by its counsel. While counsel were not concordant as to the manner or steps whereby the Kansas Pacific Railway Company has become extinct as a corporation of this state, and its property and rights merged in the Union Pacific Railway Company, yet both arrived at

the conclusion that such extinction had taken place, and that where the state once had a corporation obedient to its laws and possessed of a vast prosperity, it now had nothing, and that this corporation was now consolidated with the corporation known as the Union Pacific Railway Co., and over which the state has no power, save a sort of police power, and that this consolidated corporation owed no rights or duties to the state, save such as flow from the acts of Congress, approved respectively July 1, 1862, and July 20, 1864; and counsel strenuously maintained that the jurisdiction of the state through its courts and laws over the property and rights once pertaining to the Kansas Pacific Railway Co., are now only such as the requirements of said acts of Congress permit. This conclusion and argument, pressed upon your committee with great earnestness and marked research and ability, has led your committee to give the momentous proposition as much time and thought as was at its disposal.

The proposition of the companies involves far-reaching
136 consequences to the state, and affects its dignity and sovereignty in so vital a particular that, being conceded, no limit can be found to the removal of any corporation of the kind mentioned beyond the control of the power that called it into being. Such a result may well excite the gravest apprehensions.

In the argument before the committee this conclusion was advanced by the respective counsel for the companies on two separate grounds, the one insisting that the state had, by its acts, assented to it, while the other distinctly maintained the result to have been reached by the supreme power vested in Congress to authorize it independent of any state act whatsoever. It is necessary to consider each proposition. The first, if correct, is the one most consonant with the self-respect and dignity of the state. To substantiate it, it was maintained that certain concurrent resolutions of the state legislature at different times, asking Congress to push forward the building of the Kansas Pacific road, afford evidence that the state is reasonably pledged to permit the consolidation of its own corporation with that created by Congress to the extinction and the withdrawal of its property from state power and control. An examination of each and all of these resolutions, as presented to your committee, falls far short of bringing your committee to the claimed result. Even could the state be bound by a concurrent resolution of its legislature—and counsel for the companies freely conceded it could not, save possibly in an equitable sense—yet none of the resolutions in the remotest degree show or evince any thought in the legislative mind on the point involved. The surrender of state authority over millions of property created under its sanction and encouragement and protection, cannot be so affirmed from anything less than the most explicit and distinct legislative action to that effect. On such a question the will of the law-making power must be so clearly expressed that no room is left for doubt. Indeed, it does not seem to your committee that the legislature is clothed with any such power as is claimed. If it can consent to surrender its authority over a

strip of land from the eastern border to the west line of the state, covered with the most valuable improvements of the age, whose creation and use is absolutely essential to the welfare of the people on each side thereof for a distance of many miles, what limit shall be found to its power at last to turn over to a foreign jurisdiction all the appliances for the use of trade and transportation of products within the state? It is establishing in our midst an *imperium in imperio*, which your committee believe to be alike repugnant to our constitution and state integrity.

Your committee need not here dwell upon a well-known fact as to concurrent resolutions of the legislature of the kind before us—that often they are passed at the request of parties interested—and that the first of the series now referred to was, as averred by counsel, passed at the solicitation of Judge Thomas Ewing, jr., then a prominent member of the Kansas Pacific Railway Company. On
137 this point, then, your committee concludes that the concurrent resolutions referred to have not the effect either in law or in good conscience to bind the state to the conclusion claimed.

Some stress in the argument was laid upon the fact that in 1862 a law of this state was in force that might have authorized such a consolidation as the one under consideration, but as it was also admitted that this law was subsequently, and long before the consolidation took effect, repealed, and that the laws of the state existing at the time of the attempted consolidation did not in terms authorize it, it is hardly necessary for your committee to pursue that part of the question farther, save only to observe that beyond doubt the laws of the state did not only not authorize the arrangement between the two companies, but clearly forbade it.

Passing to the advanced position taken by the other counsel in behalf of the companies named, that Congress could in its pleasure authorize this consolidation, or, indeed, any other, so that at the last there should be under the one company a line or lines of railroad, taken from corporations created solely by state authority, from the Atlantic to the Pacific, your committee can only say that the proposition seems to be one not yet at all affirmed by any authority cited to the committee, but as to the case now in hand it does not appear that Congress has as yet attempted anything of the kind. The Pacific Railroad acts plainly show that Congress intended only to create a corporation to build a railroad through the territories of the United States, but that when the line of this road should touch the states of the Union then it would aid corporations created by the states to extend the projected lines, but nowhere is the right of Congress hinted at to remove these state corporations from the jurisdiction of the states. The distinction is shown with great clearness by Chief Justice Chase, in *Thompson* v. *Railroad Companies*, 9 Wall., 579. The section of the act of Congress which is claimed as authorizing this consolidation in unequivocal terms, declares it can only be done in a manner "not incompatible with the laws of the state" in which the road may be. The consolidation is not only not compatible with

the laws of Kansas, but in direct antagonism thereto in several respects, to wit:

First. It is repugnant to the general office law of the state passed in 1874, being chapter three of the session laws passed at the special session.

Second. It is not at all sanctioned by the law of this state authorizing certain railroads to consolidate, neither of the consolidating roads being within the classes therein mentioned.

Third. It plainly violates section sixteen of the charter of the Kansas Pacific Railway Company. This section is as follows:

"SEC. 16. Said company shall keep a fair record of the whole expense of constructing said road, and at the end of fifty years the state or states through which the said road shall pass shall
138 be at liberty to purchase said road, by paying to said company the amount at which it shall be valued at by persons mutually chosen by the state and by said company, but two years' notice shall be given said company of the intention of the state to purchase said railroad."

That this section was considered by the company in full force, and a vital one to the extent of preventing the taxing powers of the state, is manifest from the decision in the case of *Thompson* v. *Railroad Companies.* It is evident that Congress does not intend to override this provision in the charter of the Kansas Pacific Company by any act it might pass.

Your committee, without further examination, unhesitatingly arrives at the conclusion that the consolidation attempted is not authorized by law; that it derogates from the dignity of the state, and attempts to deprive it of its conceded prerogatives over the Kansas Pacific Railway as an institution created under the laws of the state. But it is said, what if all this is true—how does it really concern the state? Much, every way.

1st. The articles of consolidation expressly provide for the removal of actions brought against the consolidated company from our state to the federal courts, thereby greatly increasing the expenses of the people who have differences with the company, and besides submitting their disputes to a tribunal much further removed from the people than their own state courts, and this tribunal one that does not follow the decisions of our own state courts, unless satisfied therewith, in a large number of cases.

2d. Moreover, all questions of taxation of the property of this company will be settled in the federal courts rather than our own, whenever the company become dissatisfied with the action of our assessing tribunals.

3d. The right of the state to determine the question of charges by the company for services rendered the people of this state is completely destroyed by the consolidation, and while the visitorial power of the creator of every corporation is in this manner surrendered by the state to Congress.

4th. And beyond all this is the consideration that the state ought

to exact obedience to its laws from the powerful and wealthy as well as the weak and unknown citizen.

The foregoing presents the views of only a part of the committee —others differ from us. The matters involved are of the highest moment to the state, and those of us who agree in the above reasoning are desirous that the fullest and most careful investigation should be given to the questions presented, and hence have agreed with the majority of the committee in presenting the substitute for the house concurrent resolution.

S. O. THATCHER.
139 R. W. BLUE.
CASE BRODERICK.

140 In the Supreme Court of the state of Kansas.

The State of Kansas ex rel. W. A. Johnston, as attorney general of the state of Kansas, plaintiff,
against
F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, T. T. Eckert, Augustus Schell and John Sharp, calling themselves the board of directors of the Union Pacific Railway Company, defendants.

Answer.

I. The above-named defendants deny that at the time of the commencement of this suit they did call themselves the board of directors of the Union Pacific Railway Company; and further answering, say that Isaac H. Bromley, a citizen of Connecticut; George H. Haven, a citizen of New York; Watson Parrish, a citizen of Nebraska; Arthur L. Conger, a citizen of Ohio, and
141 Colgate Hoyt, a citizen of New York, are also members of said board; and that defendants have not assumed to act as the board of directors of the Union Pacific Railway Company, or as members thereof, except in conjunction with the individuals last named.

Defendants further say that William L. Scott and Thomas T. Eckert are not now members of said board, nor claiming to be such, but that their term of office has expired and the Union Pacific Railway Company has elected in their place and stead Charles Francis Adams, jr., a citizen of Massachusetts, and Andrew H. Green, a citizen of New York, who are now members of said board.

That the defendants Ames, Atkins, Baker and Dexter are, and were at the time of the commencement of this action, citizens of Massachusetts; that the defendant Dodge is, and was at the time of the commencement of this action, a citizen of Iowa; and that the defendants Dillon, Dows, Gould, Humphreys and Schell are citizens of New York, and were such at the commencement of this action;

that defendant John Sharp is, and was at the time of the commencement of this suit, a citizen of Utah; that defendant Clark is now, and was at the time of the commencement of this suit, a citizen of the state of Nebraska, and that the defendant Scott is now, and was at the time of the commencement of this suit, a citizen of Pennsylvania.

II. Defendants Scott, Eckert and Sharp disclaim and say that they do not now call themselves, or pretend to be, directors of the Union Pacific Railway Company aforesaid. Said Sharp has resigned and his successor has not yet been elected.

III. The other defendants, namely, Ames, Atkins, Baker, Dexter, Clark, Dodge, Dillon, Dowes, Gould, Sage, Humphreys
142 and Schell, say that they, with Adams and Green before named, do pretend to be and in fact are members of and compose part of the board of directors of the Union Pacific Railway Company.

That under and pursuant to the provision of the said acts of Congress, the President of the United States has ever since the organization of the Union Pacific Railway Company, regularly appointed in addition to the fifteen directors elected by the stockholders five government directors; and that the names of the present government directors of the Union Pacific Railway Company are as follows, namely: Isaac H. Bromley, a citizen of Connecticut; George G. Haven, a citizen of New York; Watson Parrish, a citizen of Nebraska; Arthur L. Conger, a citizen of Ohio, and Colgate Hoyt, a citizen of New York, all being citizens of states other than Kansas, who, together with the said company's directors, compose the board of directors of the Union Pacific Railway Company.

And these defendants claim and insist that the said goverment directors are necessary parties to this suit.

IV. And defendants further say that the Union Pacific Railway Company was created and organized under and by authority of an act of Congress of July 1st, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Mississippi river to the Pacific ocean, and to secure to the government the use of the same for postal, military and other purposes," and the act of July 2d, 1864, amendatory thereof, and various other acts of Congress supplementary thereto.

Defendants further say that the organization aforesaid was effected by a consolidation of the Union Pacific Railroad Com-
143 pany, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, each and all of said companies corporate being being named and described in said act of Congress and endowed by Congress with corporate franchises and powers, and expressly authorized to consolidate with each other. That such consolidation was effected by virtue of articles of union and consolidation, which articles were executed by said companies respectively by the due consent and approval of the stockholders of each of said companies, and after the execution thereof

were duly filed in the department of the interior as by said acts of Congress provided, which said articles are in substance, if not in words, set forth in the petition in this cause.

V. Further answering, the defendants say that the said Union Pacific Railroad Company, one of the parties to said articles of union and consolidation, is the corporation chartered by the said act of Congress of July 1, 1862, and the said amendatory acts, and authorized to participate and did participate in the benefits of said acts.

VI. Defendants say that the said Kansas Pacific Railway Company, one of the parties to said articles of union and consolidation, was at the time of the said consolidation a corporation created by and existing under an act of Congress, approved July 1, 1862, entitled an "Act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military and other purposes;" and an act amendatory thereof, approved July 2, 1864, entitled "An act to amend an act entitled an act to aid in the construction of a railroad and telegraph line from the Missouri
144 river to the Pacific ocean, and to secure to the government the use of the same for postal, military and other purposes, approved July 1st, 1862," and other acts of Congress amendatory thereto, copies of which said two named acts of Congress of July 1, 1862, and July 2, 1864, are herewith printed and made part of this answer, and marked respectively as Exhibits A and B in appendix No. 2, hereto attached.

Defendants further say that the Kansas Pacific Railway Company, thus incorporated and existing by said acts of Congress and said amendatory acts, proceeded to build and did build its line of road on the route marked out by the said acts of Congress and not otherwise, and under the franchises and rights and powers granted and conferred by said acts of Congress, and in the manner and under the terms prescribed by said acts, and not otherwise. That the route thus selected by Congress was not the one mentioned and described in the charter of the Leavenworth, Pawnee & Western Railroad Company referred to in the said acts of Congress, nor was the railroad built by the Kansas Pacific Railway Company in any way ever constructed, managed or operated under said last-mentioned charter, or any charter or legislation or territory or state of Kansas.

Defendants, further answering, say that Congress, intending to provide for the construction of a national highway from the Missouri river to the Pacific ocean, and secure the government of the United States the use of the same for postal, military and other purposes, and branches to connect the same at various points on the Missouri river with the main line or trunk, passed the aforesaid act of July 1, 1862, and for the same purpose subsequently made several amendments thereof.

That as an integral part of the said scheme and purpose, Con-

gress made provision in the said acts for the incorporation
145 of a railroad company to construct a railroad from the Missouri river, at the mouth of the Kansas river, so as to connect with the Pacific Railroad of Missouri at the eastern end, and with the Union Pacific Railroad Company at the western end; and to accomplish the construction of said branch to connect the Pacific Railroad of Missouri with the main line or trunk of the road of the Union Pacific Railroad Company, and the other purposes set forth in the said acts of Congress, Congress itself directly conferred and granted the necessary rights, powers and franchises upon the persons composing the Leavenworth, Pawnee & Western Railroad Company to become a corporation of the United States, with the same name, property, members and interests that they had in the then existing organization, but with the rights, powers and franchises directly granted, conferred and set forth in the said acts of Congress; and Congress required the said Kansas company to file its acceptance of the conditions of said act of July 1st, 1862, in the department of the interior, within six months after the passage of the last named act, and the said Leavenworth, Pawnee & Western Railroad Company of Kansas did accordingly file such acceptance in the interior department within the time so limited.

That after the said acceptance was thus filed, the said company thus created and incorporated, by the names successively of the Leavenworth, Pawnee & Western Railroad Company, the Union Pacific Railroad Company, Eastern Division, and the Kansas Pacific Railway Company, under the authority and by means of the subsidies conferred and granted in that behalf by the said acts of Congress and not under the authority conferred or granted by the territory or state of Kansas, constructed the road on the route selected, prescribed and authorized by Con-
146 gress, and not on the route specified in the territorial charter, extending from a connection with the Pacific railroad of Missouri, in the state of Missouri, near the mouth and on the south side of the Kansas river, to the city of Denver, in the state of Colorado, a distance of 638.50 miles, (of which 393 15-16 miles were subsidized by the bonds, and 638 miles by a grant of lands of the United States,) and a branch from Leavenworth to Lawrence, (subsidized by lands but not by government bonds,) a distance of 30.87 miles, which roads so constructed were continuously thereafter used and operated, and still are used and operated, under the authority derived from the said acts of Congress, and not under authority derived from the territory or state of Kansas, all of which was done by the procurement and with the assent of the state of Kansas. No other roads or branches have ever been constructed by the said Kansas Pacific Railway Company except the said road to Denver and the Leavenworth branch, constructed and subsidized as aforesaid by lands and bonds of the United States.

VII. Defendants say if it be true and shall be held that the effect of the said acts of Congress was not as aforesaid to confer distinct

and independent corporate capacity upon the Leavenworth, Pawnee & Western Railroad Company, or its members, as a corporation of the United States, under the name and designation of the Leavenworth, Pawnee & Western Railroad Company, that, nevertheless, the intent and legal effect and operation of the said acts of Congress, in connection with the legislative acts of the territory and state of Kansas, were directly to grant and to confer upon the said railroad company distinct, independent, and plenary power and authority immediately derived from the Congress of the
147 United States, and not from the territory or state of Kansas, to construct and operate the railroad, and only railroad that was afterwards built and operated, extending from the eastern terminus in Missouri, at the connection with the Pacific railroad of Missouri to the city of Denver, including the branch from Leavenworth to Lawrance; that the same were constructed by the said Kansas Pacific Company under and solely by virtue of the powers, authority, and franchises conferred and granted by the said acts of Congress, and not under and by virtue of any powers, authority, or franchises derived from or granted by the territory or state of Kansas; that said road and branch were built and equipped by means of the subsidies of bonds and lands received by the said company from the United States under and pursuant to said acts of Congress, and by means of money borrowed by it on mortgages authorized to be made by the said acts of Congress, and that the conditions of the said grants contained in said acts of Congress to the said company have at all times been kept and performed by the company, and that the government of the United States and the public are entitled to have the said road used, maintained, and operated by it or its successor, the Union Pacific Railway Company, as part of the Pacific system of railways provided for in said acts of Congress; that the government of the United States has the right to have the said road kept in working order and operated to the end, that it may at all times, and particularly in the time of war, have the use and benefits of the same for military, postal, and other purposes; and the right to have the net earnings and the compensation of the company for government service applied on the debt to the United States, as in said acts of Congress provided in this behalf; and the defendants say that company and its said successor is under cor-
148 responding duties to the government, arising out of the said acts of Congress and legislative contract with the government contained in the said acts accepted as aforesaid, the performance of which duties, or any part thereof, it is not within the power of the state of Kansas to prevent by legislation or judicial forfeiture; that to effect the ends of Congress, as specified in the said acts, the state of Kansas relinquished and surrendered to the government of the United States the paramount and exclusive control for all of the purposes declared in the said act of the railroads that should be constructed under the authority conferred and granted by Congress as aforesaid, so far, at least, as to vest in the

United States and in said company, as the representative therein of the United States, a contract right, secured to it by the constitution and laws of the United States; that the said company should at all times have and enjoy, independent of any future action of the state of Kansas, each and all the powers and duties which, in and by the said acts of Congress, it was stipulated and provided that the said company should at all times enjoy and perform. Defendants, further answering, say that among the conditions and provisions in the said acts of Congress it was expressly provided and enacted that the whole line of the said railway company and branches and telegraph should be operated and used for all purposes of communication, travel, and transportation, so far as the public and government are concerned, as one connected, continuous line; that the companies therein named in Missouri, Kansas, and California (including said Kansas company by name) should file their assent to said acts; and that for the purpose of securing the operation of the said railroads and branches as one continuous line,
it was, in and by the said act, further expressly stipulated
149 and provided, "That at any time after the passage of this act all of the railroad companies named herein and assenting hereto, or any two or more of them, are authorized to form themselves into one consolidated company."

And these defendants further say that said Kansas company, having filed its assent to the provisions of the said act, and having participated in the benefits conferred thereby, and so coming under the duty thereby imposed to operate its railroad as one continuous line with the other railroads enumerated in said act, and particularly with the railroad of the Union Pacific Railroad Company and the Denver Pacific Railway and Telegraph Company, said company found itself obliged and required in the performance of said duty and for the better service of the public and government, as provided by the said act, to form itself into one consolidated company with the said Union Pacific Railroad Company and the said Denver Pacific Railway & Telegraph Company as aforesaid; and defendants aver that cheaper and better service to the government and public have resulted therefrom, as contemplated by the said act.

Defendants state and aver that said Kansas Pacific Company was, at and before the date of said consolidation, wholly unable to make payment of its debts and current interest charges, including those prior in lien to the United States, and was in point of fact wholly disabled from making the payments and performing the duties of the United States required by the said acts of Congress without the said consolidation.

And these defendants aver that said Kansas Pacific Company thereupon entered into such consolidation, and that the consolidate company has ever since made said payments and performed duties
as required of the said Kansas Pacific Company by said acts
150 of Congress, being thereto enabled by the fact of said consolidation, and not otherwise.

And defendants further aver and state that if the said consolidation were annulled by the judgment of this court or otherwise, then said Kansas Pacific Company would be and become unable thenceforth to make said payments or perform said duties as required by law; such consolidation relation being indispensable thereto.

And these defendants say that among the powers and contract rights of said Kansas Pacific Company were the power and right to unite and consolidate its organization with that of any one or more of the companies authorized to participate in the benefits of said acts, and the duty and obligation of said company or its successor by assignment or consolidation to pay the subsidy bonds received from the government at maturity, to keep the said railroad in repair and use, transmit mails, troops and munitions of war and public stores for the government whenever required to do so by any department thereof, giving the government at all times the preference in the use of the same for the purposes aforesaid, at the contract rates of compensation fixed in said acts; that until the said subsidy bonds and interest thereon were paid, to apply annually at least five per centum of the net earnings of the road to the payment thereof, and one-half of the compensation for services rendered by the said company to the payment of said subsidy bonds issued by the government in aid of the construction of said road; that for more than twenty years prior to the institution of this suit the state of Kansas had assented to the said acts and had recognized and affirmed the paramount and exclusive control of Congress over the roads thus constructed under the authority and by means
151 of the right and subsidies of bonds and money granted by Congress; and so these defendants submit that no judgment in this proceeding can be rendered which would disable the said Kansas Pacific Company or its successor, the Union Pacific Railway Company, from discharging towards the government and the public every duty which the said acts of Congress enjoined and required.

Further the answering, defendants say that they are advised and state that the said charter granted by the territorial legislature of Kansas did not reserve to the legislature the power of amendment or repeal, and defendants are advised that no power existed to amend or change the same without the consent of the company; that said charter when accepted and acted upon by the company, constituted a contract with the company and its members, which no subsequent act of the legislature of Kansas could impair, and that it is and was beyond the legislative power and competency of the state of Kansas by any legislation subsequent to the granting of the said charter or subsequent to the acceptance thereof, by the company, or subsequent to the company's acceptance of the act of Congress of July 1, 1862, as herein stated, to changed, without consent, the rights of the company, or its members, or of the United States, or to effect by any repeal rights existing at the date of said

last-named acceptance, or to impose additional duties upon or to subject the company to forfeiture for newly-created causes.

VIII. Defendants further say that on the 3d of March, 1869, the Congress of the United States passed an act entitled, "An act to authorize the transfer of lands granted to the Union Pacific Railway Company, eastern division, between Denver and the point of its connection with the Union Pacific Railway, to the Denver Pacific Railway & Telegraph Company, and to expedite the completion of railroads to Denver, in the territory of Colorado," for the purpose of authorizing the said first-named company "to contract with the Denver Pa-
152 cific Railway & Telegraph Company for the construction, operation and maintenance of that part of its line of railroad and telegraph between Denver city and its point of connection with the Union Pacific Railroad which point shall be at Cheyenne, and to adopt the road bed already graded by said Denver Pacific Railway and Telegraph Company as said line, and to grant to said Denver Pacific Railway & Telegraph Company the perpetual use of its right of way and depot grounds, and to transfer to it all the rights and privileges subject to all the obligations pertaining to said part of its line," a copy of which said act of Congress is hereto attached, marked Exhibit D, in Appendix 2, and made a part of this answer. In pursuance of said act of Congress the said first-named company made the contract therein authorized; the road from Cheyenne to Denver was accordingly built and completed in 1870, and became, for the purposes of the act of Congress, a part of the Kansas Pacific Railway Company and of the Pacific system, so as to form the connection with the Union Pacific Railroad at Cheyenne, as originally contemplated in the act incorporating said first-named company and the Union Pacific Railroad Company.

IX. On the 24th of January, 1880, the Union Pacific Railroad Company, a corporation duly organized and existing under the act of Congress of July 1st, 1862, and the act of Congress of July 2d, 1864, being Exhibits A and B aforesaid, and various other acts amendatory of the same, and the Kansas Pacific Railway Company, a corporation also organized and existing under the acts of Congress last referred to, and the Denver Pacific Railway & Telegraph Company, which by an act of Congress approved June 20, 1874, "That the Denver Pacific Railway and Tele-
graph Company shall be deemed and taken to be a part and
153 extension of the road of the Kansas Pacific Railroad to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyenne, as provided in the act of March 3d, 1869," entered into an agreement of union and consolidation, whereby the three companies severally agreed to and with each other to unite and consolidate, and thereby they did unite and consolidate their respective organizations, properties and companies into one consolidated company, which succeeded to and became entitled to possess and receive from the government of the United

States all and singular the grants, benefits, immunities, guarantees, acts and things to be done and performed, and became subject to the same terms, conditions, restrictions, and requirements which the three companies respectively at the date of the consolidation were entitled to under the acts of Congress in that behalf, in place and substitution of the said constituent companies so consolidated; and the said consolidated company, by said articles of consolidation, assumed to and for itself, that by the various acts of Congress hereinbefore recited, it was entitled to the benefit of all the provisions of said acts of Congress, so far as applicable, relating, or in any manner pertaining to said constituent companies or either of them.

These defendants aver the said consolidation was made, formed and effected in strict conformity with the said acts of Congress, and that the said articles of union and consolidation have, since their execution and filing in the interior department, been carried out and consummated, as in this answer set forth, whereby and by force of the premises the Kansas Pacific Company's organization has become united and consolidated with that of the consolidated company; new stock has been created and issued by the consolidated company, as hereinafter
154 stated, and exchanged for the stock of all of the constituent companies, and the said consolidated company thus formed has succeeded in the place and substitution of said constituent companies to all their roads and properties, rights, powers and privileges, and subject to obligations to the public and the government of the United States; that by force of the said consolidation and conveyances duly executed, the consolidated company acquired the roads built as aforesaid by each of said constituent companies, and the right to operate the same, and has since operated the same, fulfilling all of its duties to the government and to the public, as a part of the Pacific system of railways chartered and authorized by Congress as aforesaid.

A copy of said articles of union and consolidation was duly filed in the department of the interior January 26th, 1880.

A copy of said articles of union and consolidation, marked Exhibit C, in Appendix 3, hereto attached, is made a part of this answer as fully as if set forth herein at length.

Defendants say that the terms and conditions and manner of said consolidation were not incompatible with the said acts of Congress, or the laws of Kansas, or of the state or states in which the roads of the said constituent companies were situate.

These defendants insist and allege that the power to consolidate, as aforesaid, is derived from the said acts of Congress, which acts were assented to by the state of Kansas, and defendants aver that in executing the said power of consolidation the Kansas Pacific Company, as well as the other constituent companies, conformed with the terms and conditions which were required by the laws of the state of Kansas and the other states to effect a consolidation of

railway corporations, under the laws of the said states, and
155 furthermore acted within the powers conferred by the laws of Kansas and said other states upon the said Kansas Pacific and said other companies. To this end the said articles of consolidation were ratified and approved by due corporate vote of each of the said companies, and also by parties representing more than two-thirds of all of the stock of each of the constituent companies, including the said Kansas Pacific Railway Company, which ratification and approval on the part of the shareholders of last-named company were in writing, and a certified copy of the articles of consolidation and of such ratification and approval were duly filed with the secretary of the state of Kansas on the 30th day of April, 1880, and also in the department of the interior.

Defendants say that, prior to the 26th day of April, 1880, said articles of consolidation were ratified and approved by 199,084 shares out of 200,000 shares in the Kansas Pacific Railway Company, and that all of the shareholders of said company, with the exception of thirty-one shares, have since exchanged their shares of stock for the stock of the consolidated company, all of which was done years before the present suit was commenced.

And the said articles of consolidation were in writing, duly approved and ratified on or about January 24th, 1880, in conformity with the laws of the state of Colorado, applicable to the consolidation of railways in said state, by every shareholder and stockholder in said Denver Pacific Railway and Telegraph Company and the said articles of consolidation were also duly approved and ratified by a stockholders' vote at a meeting of the said company duly called and held at the city of Denver, Colorado, on the 30th day of September, 1880, at which meeting every share but one was represented, and 39,999 shares voted for such approval and ratification, and none against it. Every share of the said stock of the said company has long since been exchanged for the stock
156 of the consolidated company. Said articles of consolidation were duly filed in the office of the secretary of state of Colorado on the 2nd day of August, A. D. 1880, and also in the department of the interior.

Said articles of consolidation were also approved and ratified in writing by more than two-thirds of the stockholders of the Union Pacific Railroad Company on or about January 24th, 1880, and the same were also approved and ratified by a recorded vote of the stockholders of said company at a special meeting of the stockholders duly called and held in the city of Omaha, August 18th, 1880. Not a vote was cast against the ratification and approval of the said articles of consolidation at the said meeting. Said articles of consolidation were duly filed in the office of the secretary of state of Nebraska, and also in the department of the interior. The consolidated company, soon after the consolidation was made, issued its stock in exchange for the stock of said constituent companies, and all of the stock of the Union Pacific Railroad Company has long

since been exchanged for the stock of the consolidated company, except 1,930 shares, most of which has, however, assented to said consolidation.

The government directors officially reported on December 16, 1880, to the secretary of the interior, that the said consolidation had been made, and printed in the said report the said articles of consolidation *in extenso*. The auditor of railroad accounts, appointed under the act of Congress of June 19, 1878 (20 Stat., 169), also officially reported, on November 1, 1880, the said consolidation to the secretary of the interior, and the same was thereupon, by the said secretary, officially communicated to Congress, and the said consolidation has been recognized and acted upon by every
157 officer and department of the government whose office and duty is to act with respect to the said railroad.

Immediately upon the said consolidation being effected, the question arose as to whether the provisions of law in respect of government directors applied to the new organization, and if so, then as to the extent of the jurisdiction and power of the government directors in respect of the consolidated property. The company, on the 26th day of January, 1880, postponed the decision of the question until the next annual meeting; whereupon the government directors communicated the fact to the secretary of the interior, who submitted the matter to the attorney general of the United States, who, on the 8th day of March, 1880, gave the following official opinion:

(Copy.)

DEPARTMENT OF JUSTICE,
WASHINGTON, *March 8th*, 1880.

HON. CARL SCHURZ,
Secretary of the Interior:

SIR: I have received your note of even date, and as I am requested to answer it at once, I reply that in my opinion no consolidation could be made of the Union Pacific R. R. with other companies which should enable them to exclude government directors therefrom, in the proportion named in the 13th section of the act of July 2d, 1864. While a consolidation was contemplated, it will be seen by examining the section 16th of that act, which relates to the consolidation of these companies, that it is clearly contemplated thereby that all provisions for the benefit of the United States, so far as applicable, relating or in any manner apertaining to the companies so consolidated, were to apply and be in force in such consolidated organization.

Very respectfully, your obed't servt.,

CHAS. DEVENS,
Attorney General.

158 Ever since which time the President of the United States has regularly appointed, under the said acts of Congress,

five directors of the consolidated company, who have acted and still act with the company's directors in the management of its affairs; and the present government directors are the five persons hereinbefore named as such.

Since the said consolidation, the Union Pacific Railway Company has, in conformity with law, to provide "the means of meeting its obligations, improving, bettering, and equipping its roads, and thereby increasing the value of the existing property, and to enable the company to afford better facilities to the public," increased its authorized capital stock to $61,000.000, divided into shares of $100, instead of $50,762,300, as fixed in the articles of consolidation. Defendants say that the present outstanding stock of the consolidated company held by the public is $60,868,500. On the 29th day of January, A. D. 1881, such increase of stock was officially communicated to the department of the interior, and the auditor of railroad accounts, in answer thereto wrote to the solicitor of the company as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF AUDITOR OF RAILROAD ACCOUNTS.
WASHINGTON, D. C., *February* 15, 1881.

DEAR SIR: Your letter of the 29th ultimo, with inclosures referring to the issue of additional stock by the Union Pacific Railway Company, has been received.

The purpose for which this additional capital is to be used, as set forth in the circular of the 20th ultimo, and the fact that the entire amount is payable in money at the par value of the shares, preclude any exceptions which might otherwise have been taken to this action on the part of the company. This additional capital must undoubtedly result in increasing the value of all the
159 company's property, and thus add to the security of all of its creditors.

Very respectfully, THEOS. FRENCH,
Auditor.

Such increase of stock was communicated to Congress and no objection thereto made by it.

Said consolidated company has also issued and sold in the markets its negotiable bonds for money borrowed by it, to the extent of several millions of dollars, which bonds by their terms do not fall due for about twenty-five years.

The stock and securities of the said consolidated company have been listed in the stock exchanges of New York, Boston, and elsewhere, and have been freely and largely dealt in by the public and are easily bought and sold. The said consolidated company has over 4,000 stockholders in Europe and America.

Since the said consolidation was made, all contracts touching the operation of the said roads and properties acquired by the consolidated company have been made by it, and conveyances for many thousand acres of land in Kansas and elsewhere executed by it.

On the faith of the said consolidation, the consolidated company has entered into numberless transactions, and incurred expenditures and liabilities amounting to more than $75,000.000.

Under the said acts of Congress to aid in the construction of the said road, the said Kansas Pacific Railway Company received United States bonds to the amount of $6,303,000, on which the interest, accumulated to the 30th day of June, 1883, amounts to $6,129,333.09, all of which, both principal and interest, remains unpaid, and is not due and payable for many years to come, except such portion of the interest as may be paid out of the application of five per cent. of the net earnings of the company and one-
160 half of the compensation for services rendered to the government as provided in said acts.

The said Kansas Pacific Railway Company, under the express authority of the said acts of Congress of July 1, 1862, July 2, 1864, March 3, 1865, and March 3, 1869, and not under any authority from the territory or state of Kansas, has executed the following mortgages upon its said road, equipment, and income, to wit:

Mortgage dated 1st day of August, 1865, due in thirty years from date, $2,240,000.

Mortgage dated 1st day of June, 1866, due in thirty years from date, for $4,063,000.

Income mortgage dated July 1, 1868, due in thirty years from date, for $4,275,650.

Mortgage dated 1st day of June, 1869, due in thirty years from date, bonds now outstanding, $6,310,000.

Mortgage dated 1st day of January, 1866, due in thirty years from date, on the Leavenworth branch, for $600,000.

Consolidated mortgage dated 1st day of May, 1879, due in A. D. 1919, under which bonds are outstanding and unpaid for $15,640,000, and in all of the said mortgages this defendant conveyed its said road and franchises, and pledged its earnings. The principal sums in said the mortgages do not fall due for many years to come, and the interest on the fixed obligations of the company, secured by the said mortgages, has been and is regularly paid by the consolidated company.

X. And defendants further say that if the said Kansas Pacific Company was originally incorporated by the act of the legislature of Kansas, it became entitled, by virtue of the acts of Congress hereinbefore set forth, to consolidate with the said compa-
161 nies as aforesaid, and that further authority to thus consolidate, even if it were incorporated by the territory of Kansas, was granted by an act of the state of Kansas approved March 5th, 1862, entitled "An act relating to railroad companies," (Compiled Laws of Kansas of 1862, p. 767,) a copy of which said act of the legislature of the state of Kansas is hereto attached, marked Exhibit D, of Appendix 1, and made part hereof.

And the defendants further say that the conditions mentioned in

the proviso to said section authorizing the consolidation as aforesaid, were all duly complied with before said consolidation took effect. The defendants further say that said law, although general in its terms, has special reference to the Leavenworth, Pawnee & Western Railroad Company, to which company lands had then been ceded by the Pottawatomie Indians, by a treaty then pending in the United States Senate, there being no other treaty pending by which such lands were ceded to any other company.

And defendants further say that the said Leavenworth, Pawnee & Western Railroad Company was authorized to make said consolidation by an act of the legislature of the State of Kansas, passed in 1865, section 22 of which is as follows:

Extract from laws of Kansas, 1865, p. 101.

SEC. 22. Any railroad company in this state forming a continuous or conecting line with any other railroad company, may consolidate with such other company, either in or out of this state into single corporation, in the manner following: First, any two or more railroad corporations may, by their directors, enter into an agreement, under the corporate seal of each, for the consolidation of the two or more corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the names and places of residence and number of the directors thereof, which shall not exceed nineteen,
162 the time and place of holding the first election of directors, the number of shares of capital stock in the new corporation, the amount of each share, which will not be less than one hundred dollars, the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporation, the manner of compensating stockholders in each of said two or more corporations who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporation shall possess all the powers, rights, and franchises conferred upon such two or more corporations, and shall be subject to all the restrictions and perform all the duties imposed by the provisions of this act.

And also by an act of the legislature of the state of Kansas, approved March 1, 1870, which reads as follows:

[EXTRACT FROM SECTION 1 of "An act to provide for the consolidation and extension of railroads in the state of Kansas," approved March 1, 1870. Laws of Kansas of 1870, p. 195.]

"*Be it enacted by the legislature of the state of Kansas:*

SECTION 1. Any two or more railroad companies in this state, existing under general or special laws, and owning railroads constructed wholly or in part, which when completed and connected will form a continuous line or lines of railroad, and any railroad company organized as aforesaid, and any railroad company duly organized and existing under the laws of an adjoining state, whose

lines of railroad shall connect at the state line so as to form when completed a continuous line of railroad, are hereby authorized to consolidate and form one company owning and controlling such continuous line or lines of railroad, with all the rights, powers, privileges, and immunities, and subject to all the obligations and liabilities to the state, which belong to or rested upon either of the companies making such consolidation."

163 Defendants further say, that the state of Kansas at all times, until the passage of the joint resolution in 1883, authorizing this suit to be brought, has recognized the said Kansas Pacific Company as a corporation existing under and by virtue of the acts of Congress aforesaid, and subject to the exclusive control and regulation of Congress aforesaid, by various concurrent resolutions adopted at different times; copies of which resolution, marked N, O, P, and Q, in Appendix 1, hereto attached, are made a part of this answer.

Defendants say that by the resolutions, marked Exhibit N, adopted March 1, 1864, the legislature of the state of Kansas asked Congress to compel said company to make Wyandotte, Lawrence, Topeka, Wabaunsee, Manhattan, and Junction City, points on its road, whereas, by the charter of the Leavenworth, Pawnee & Western Railroad Company, as conferred by the act of the territorial legislature, said Leavenworth, Pawnee & Western Railroad Company had the chartered right to omit from its line of road all of said towns; and Congress in the said act of July 2d, 1864, conformed to the wishes of the state as thus expressed, by requiring said company to construct its road by the way of Lawrence and Topeka, or on the bank of the Kansas river, opposite said towns, which the company did.

Defendants further say that by the resolution, marked Exhibit O, adopted in February, 1867, and P, adopted in 1868, the state of Kansas urged Congress to extend further aid to said road, and to authorize its extension to the Pacific coast.

Defendants further say that by a resolution, marked Exhibit Q, adopted in February, 1874, the state of Kansas expressly affirmed that Congress organized and created said Kansas Pacific Company as one of the branches of the Union Pacific Rail-

164 road Company as incorporated by act of Congress, and complained that the Union Pacific Railroad Company was guilty of continued and persistent violation of law, "in its refusal to recognize the Kansas Pacific, formerly the Union Pacific Railway, eastern divicion, as one of the branches contemplated in the original act of July 1, 1862, and the subsequent amendments thereto, and by its further refusal to grant unto said Kansas Pacific, or Union Pacific Railway, eastern division, all the privileges, immunities, and benefits, as provided for by said acts of Congress; and Congress accordingly passed the said act, approved June 20, 1874. (18 Stats. at Large, 111.)

XI. The defendants say that Congress passed a joint resolution, approved March 3d, 1869, which read as follows:

"Joint resolution authorizing the Union Pacific Railway Company, eastern division, to change its name to the Kansas Pacific Railway Company. Be it resolved by the senate and house of Representatives of the United States in Congress assembled, that the Union Pacific Railway Company, eastern division, is hereby authorized, by resolution of its board of directors, which shall be filed in the office of the secretary of the interior, to change its name to the 'Kansas Pacific Railway Company,' approved March 3d, 1869."

And that the name of said company was changed by virtue of said joint resolution, and not otherwise.

XII. Defendants allege that neither the said charter of the said Leavenworth, Pawnee & Western Company, granted by the territory of Kansas, nor any other act of the legislature of Kansas, gave the said company any power or authority whatever to
165 build a road to the mouth of the Kansas river, and to the south side thereof; and that the authority to build a road to the mouth of the Kansas river, and to connect with the Pacific Railroad of Missouri, was contained in the aforesaid acts of Congress chartering the Pacific system of railroads; and in and by the said charter, the road which this defendant was authorized to construct was required by said acts of Congress to be constructed from the mouth of the Kansas river, on the south side thereof, so as to connect with the Pacific Railroad of Missouri. The Pacific Railroad of Missouri was a state corporation chartered by the state of Missouri, with power to construct a road from "the Mississippi river, or any other point in the city of St. Louis, to any point on the western line of the state of Missouri which said company may select." The said Pacific Railroad of Missouri fixed its western terminus in the large and important city of Kansas City, in the state of Missouri, which city is situated near to, but not on, the state line of Kansas. The said Kansas Pacific Railway Company, in order to make its connection with the Pacific Railroad of Missouri, as required by the said act of Congress, was obliged to construct, and did construct, about three-quarters of a mile of road into the said Kansas City, and into the state of Missouri, and into the union depot in the said Kansas City, and there connected with the Pacific Railroad of Missouri and many other roads terminating in Kansas City, all of which was done many years ago, as required by the acts of Congress, with the assent both of the states of Missouri and of Kansas. The said union depot in Kansas City is 3,220 feet east of the state line of Kansas.

XIII. Under the authority given by section 9 of the said
166 act of Congress, July 2d, 1864, and section 1 of the act of Congress of July 3, 1866, the Kansas Pacific Railway Company did not build its road to the one hundredth meridian in Nebraska, but built the same continuously through the state of

Kansas and into the territory (now and at the date of said consolidation the *state*) of Colorado to the city of Denver, in said state of Colorado, and under the act of Congress of March 3d, 1869, and pursuant thereto, it connected its line by road, by means of the Denver Pacific Railway & Telegraph Company, with the road of the Union Pacific Railway Company at Cheyenne in Wyoming territory, at or near the state line of Colorado. Said road was completed to Denver on or about August 15, 1870, and to Cheyenne on or about September 1, 1870.

Defendants say that in the construction of so much of its said railroad as lies beyond the state line of Kansas and within the territory of Colorado, the said Kansas Pacific Railway Company was authorized, in and by the acts of Congress hereinbefore referred to, to build, and did build the same as a corporation of the United States; created and authorized thereto by the necessary effect and operation of the said acts of Congress as hereinbefore set forth. Nevertheless, if it shall be held that it was not the necessary effect and operation of the said acts of Congress thereby to create and to make the said company a corporation of the United States, then defendants submit that in the construction and operation of so much of its said railroad as lies within the then territory and now state of Colorado aforesaid, said company was acting as a corporation of the territory, now state, of Colorado, and was, in fact, within the meaning of said Kansas act of March 1, 1870, a railroad company, duly organized and existing under the laws of the said state of Colorado, whose lines of railroad connected at the state line so as to form one complete and continuous line of railroad with the
167 railroad owned and operated by the said Kansas Pacific Railway Company as a corporation of the state of Kansas.

Defendants aver that the said line of railway, so consolidated as aforesaid, at the date of such consolidation did connect with the said line of the Kansas Pacific Company at the state line of Kansas, so as to form one completed and continuous line of railroad.

XIV. These defendants further say that the constituent companies executing said agreement of consolidation, executed the same in due form and in conformity to the acts of Congress and by authority thereof; and they aver that in the execution of the same said companies had full authority and warrant in law; and that since the execution of the same, these defendants, with their co-directors, have exercised, and these defendants together with the said government directors do exercise the liberties, privileges and franchises appertaining to the board of directors of the said Union Pacific Railway Company, and that the said company has used, operated, received and enjoyed the tolls, issues, profits and benefits derived from the operation of the railroads of each of the several constituent companies consolidated as aforesaid, and that all of the acting and doings of the defendants and said government directors in the premises have been in strict conformity to the several acts of Congress herein before referred to, and that they have been and are

by the United States, the public and all persons in authority recognized as acting in strict conformity with the law in the operation and management of said railroads, and they have been governed in the premises by the provisions of the acts of Congress above referred to.

168 XV. For further answer defendants say that all allegations in said petition not herein expressly admitted, are denied, and they ask that the plaintiff be required to make strict proof of the same.

XVI. The defendants annex to this answer as an exhibit copies of various acts of Congress and of the Kansas legislature and other official documents pertaining to the Union Pacific & Kansas Pacific Railroad Companies.

XVII. These defendants, though protesting and insisting that the said petition is insufficient, have nevertheless fully answered the same, and prays that it may be dismissed and discharged by the court hereof and from the premises aforesaid.

JOHN F. DILLON,
J. P. USHER,
A. L. WILLIAMS,
Attorneys for said Defendants.

THE STATE OF NEW YORK, }
City and County of New York, } *ss:*

Sidney Dillon, being duly sworn, says he is one of the defendants, and is the president of the Union Pacific Railway Company, that he knows the contents of said answer, and that the facts therein stated are true as he verily believes.

169 THE STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Edward Canfield, notary public in and for said city, county and state, do hereby certify that the above and foregoing answer and verification was signed by the said Sidney Dillon, in my presence, and sworn to by him before me, this — day of October, 1883.

Witness my hand and official seal hereto set the date last above written, notary public as aforesaid.

170 And afterward, on the 2d day of November, A. D. 1883, there was filed in the office of the clerk of the Supreme Court of the state of Kansas, a petition and bond for removal, which is in words and figures as follows, to wit:

171 In the Supreme Court of the state of Kansas.

The State of Kansas ex rel. W. A. Johnston, as attorney general of the state of Kansas, plaintiff,

vs.

F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, T. T. Eckert, Augustus Schell, and John Sharp, calling themselves the board of directors of the Union Pacific Railway Company, defendants.

Petition for removal to the Circuit Court of the United States for the district of Kansas.

To said Supreme Court:

I. Your petitioners, F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, S. H. H. Scott, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, T. T. Eckert, Augustus Schell, and John Sharp, the defendants above named, respectfully show to this honorable court, that the matter and amount in dispute in the above entitled suit exceeds, as to each of them, exclusive of costs, the sum or value of five hundred dollars.

They disclaim and deny that they have ever pretended to be operating or in any way or manner controlling the railroad
172 formerly known by the name of the Kansas Pacific Railway, other than as part of the board of directors of the Union Pacific Railway Company, hereinafter mentioned. And your petitioners aver that they were at the time of the commencement of this suit, and still are, with the exception of the said Scott and the said Eckert, whose terms have expired, directors of the Union Pacific Railway Company, elected by the stockholders thereof, and that said railway company is a corporation created and existing under the laws of the United States.

And your petitioners further aver that pursuant to and by the authority of the act of Congress entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military and other purposes," approved July 1st, 1882, and the several acts of Congress amendatory thereof and supplemental thereto, the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company, were, by articles of agreement duly executed by said companies January 24th, 1880, consolidated under the name of the Union Pacific Railway Company. That said articles were then filed in the department of the interior at Washington, and from that time said consolidated company has been known and recognized in all the departments of the government of the United States as a corporation duly existing under the laws of the United

States, created under the acts of Congress aforesaid, and for the use and purposes mentioned in the title and body of said act of July 1st, 1862, and the amendments thereto.

Your petitioners aver that the Union Pacific Railroad Company was incorporated and existing under said act of July 1, 1862; that the Kansas Pacific Railway Company was originally authorized to be incorporated under the name of the Leavenworth, Pawnee & Western Railroad Co., by a law of the territory of Kansas passed in 1855, and afterwards assumed and was known by the name of the Union
173 Pacific Railway Company, eastern division, and its name was by authority of joint resolution of Congress, March 3, 1869, changed to that of the Kansas Pacific Railway Company; that said company, by virtue and authority of the acts of Congress aforesaid, constructed its railroad from Leavenworth to Lawrence, and from the eastern terminus in Missouri on the south side of the Kansas river, as fixed by said acts of Congress, to Lawrence and from there to Denver, the entire line being within the state of Missouri and the bounds of the former territory of Kansas, part whereof is now in the state of Kansas and part in the state of Colorado; that the Denver Pacific Railway and Telegraph Company is the same company mentioned in the act of Congress entitled "An act to authorize the transfer of lands granted to the Union Pacific Railway Company, eastern division, between Denver and the point of its junction with the Union Pacific Railroad, to the Denver Pacific Railway and Telegraph Company, and to expedite the completion of railroads to Denver, in the territory of Colorado," approved March 3, 1869.

And your petitioners further aver that all their actings and doings mentioned and referred to in the petition of plaintiff in this suit have been and are under and by virtue of the authority of Congress conferred upon said companies by said acts whereby the Union Pacific Railway Company became a corporation, which your petisioners aver is a lawful corporation, and they aver that they are lawful and duly constituted members of the board of directors thereof, and constitute said board, with the exception of said Scott and the said Eckert, whose terms of office have expired, their successors being Charles Francis Adams, jr., of Massachusetts, and Andrew H. Green, of New York, and with the exception of the government directors.

Your petitioners further show to this honorable court that this is a suit of a civil nature, commenced and now pending in this honorable court; and that the amount in dispute exceeds, as to each of them, the sum or value of five hundred dollars; and that
174 the same is a suit arising under the laws of the United States, to wit, under the aforesaid act of Congress of July 1, 1862, and various acts of Congress amendatory thereof and supplemental thereto; and that its decision involves the true and correct construction of the said laws of the United States, and the rights, titles and obligations of your petitioners there-

under. Your petitioners also aver that they have a good and sufficient defense thereto under the constitution and laws of the United States. Your petitioners state the real and substantial dispute, controversy and question in this cause is the rightful power and authority of the three railroad companies above-named to consolidate or unite their respective organizations under the said acts of Congress above mentioned and the effect of such union and consolidation, and that the decision of this dispute and controversy necessarily involves the true construction and effect of the said acts of Congress, and the right and titles of your petitioners thereunder. Your petitioners state that the statutes of the territory and state of Kansas, and the said acts of Congress, and the said consolidation and acts done thereunder, create in them and in the said Union Pacific Railway Company, and in the several constituent companies, vested rights which are in controversy in this suit, given by contract which cannot lawfully be impaired by the state; and that this cause is one arising under the constitution and laws of the United States, and the defense thereto is one also arising under the constitution and laws of the United States.

II. Your petitioners state that at the time of the commencement of this suit, and at this time, the said Union Pacific Railway Company was and is a corporation, other than a banking corporation, organized under the laws of the United States, to wit, under the aforesaid act of Congress, approved July 1, 1862, above referred to, and the various acts of Congress amendatory thereof and supplemental thereto. That this is a suit commenced in this court, to wit, the Supreme Court of the state of Kansas, being a court other than a circuit or district court of the United States, against your petitioners as members of such corporation and as
175 directors thereof, and is for an alleged liability of your petitioners as such members and as such directors; and that your petitioners have a defense to this suit and the cause of action of the plaintiff herein, and as against the said plaintiff, arising under the constitution of the United States, and under a law of the United States, to wit, said acts of Congress hereinbefore referred to; and that said defense involves the true and correct construction and effect of the said constitution and the said laws of the United States, to wit, said acts of Congress before referred to, and the various acts of Congress amendatory thereof and supplemental thereto, and of the rights, titles and obligations of your petitioners and each of them, under and by virtue thereof; and that the amount in dispute, exclusive of costs, exceeds, as to each of them, the sum or value of five hundred dollars. Your petitioners state that this suit has not been tried, but is now pending for trial in this honorable court.

Your petitioners now at the time of filing this their petition, and in this court, offer good and sufficient surety for their entering in the Circuit Court of the United States for the district of Kansas, on the first day of its now next session, copies of all process against

them, and all pleadings, depositions, testimony and other proceedings in this cause, and also for their there appearing and entering special bail in the cause or suit, if special bail was originally requisite therein; and your petitioners make and file herewith a bond with good and sufficient surety for their entering in said Circuit Court on the first day of its next session a copy of the record in this suit, and for paying all costs that may be awarded by the said Circuit Court, if said court shall hold that this suit was wrongfully or improperly removed thereto, and also for their there appearing and entering special bail in this suit, if special bail was originally requisite therein.

Wherefore your petitioners pray this honorable court to
176 accept this their petition and the said surety or bond, and to proceed no further in this suit.

FRED'K L. AMES.
SIDNEY DILLON.
G. M. DODGE.
RUSSELL SAGE.
THOS. T. ECKERT.
JAY GOULD.
JOHN HUMPHREYS.
W. L. SCOTT.
ELISHA ATKINS.
E. H. BAKER.
F. GORDON DEXTER.
DAVID DOWS.
AUGUSTUS SCHELL,
By SIDNEY DILLON,
His attorney in fact.

S. H. H. CLARK,
By SIDNEY DILLON,
His attorney in fact.

JOHN SHARP,
By SIDNEY DILLON,
His attorney in fact.

JOHN F. DILLON,
J. P. USHER,
A. L WILLIAMS,
Attorneys for said Petitioners.

STATE OF NEW YORK,
City and county of New York, } *ss.*

F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, T. T. Eckert, and Sidney Dillon, as attorney in fact for S. H. H. Clark, Augustus Schell and John Sharp, being duly sworn, each severally says that he is one of the

above-named petitioners; that he has read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

DAVID DOWS.
F. GORDON DEXTER.
AUGUSTUS SCHELL,
By SIDNEY DILLON,
His attorney in fact.

S. H. H. CLARK,
By SIDNEY DILLON,
His attorney in fact.

JOHN SHARP,
By SIDNEY DILLON,
His attorney in fact.

ELISHA ATKINS.
E. H. BAKER.
SIDNEY DILLON.
G. M. DODGE.
FRED'K. L. AMES.
RUSSELL SAGE.
THOS. T. ECKERT.
JAY GOULD.
JOHN HUMPHREYS.
W. L. SCOTT.

177 Sworn to before me, this 4th day of October, A. D. 1883, by each of the aforesaid named affiants, except said Atkins, Baker, and Dexter, and by Sidney Dillon as the attorney in fact of the said Augustus Schell, the said S. H. H. Clark, and the said John Sharp.

Witness my hand and seal notarial hereunto set, this 4th day of October, 1883.

[SEAL.] W. W. COTTON,
Notary Public, Kings County, New York.
(Certificate filed in New York county.)

Sworn to before me by the said Elisha Atkins, F. G. Dexter, and Ezra H. Baker, this third day of October, 1883.

Witness my hand and seal notarial hereto set, this third day of October, 1883, at Boston, in the state of Massachusetts.

[SEAL.] JAMES G. HARRIS,
Notary Public.

(Endorsed:) No. 2970. State of Kansas *vs.* F. L. Ames et al. Petition for removal. Filed Nov. 2, 1883. C. J. Brown, clerk Supreme Court.

THE STATE OF KANSAS, } ss:
Supreme Court, }

I, C. J. Brown, clerk of the Supreme Court of the state of Kansas, do hereby certify that the above and foregoing is a true copy of the petition for removal in the cause above entitled, as filed in my office on the 2d day of November, 1883.

Witness my hand and official seal, affixed hereto at my office in Topeka, this 3d day of November, 1883.

[SEAL.]

C. J. BROWN,
Clerk Supreme Court.
By W. E. STERNE,
Deputy.

178 Know all men by these presents, that we, F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, T. T. Eckert, Augustus Schell, and John Sharp, as principals, and Henry Tisdale and George Fricker, of Douglas county, Kansas, as sureties, are hereby held and firmly bound unto the state of Kansas, or whom it may concern, in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, representatives, and assigns, firmly by these presents.

The condition of this obligation is such, that if the said above-named principal obligors shall enter and file, or cause to be entered and filed, in the Circuit Court of the United States for the district of Kansas, on the first day of its next session, copies of all process against it, and of all pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the Supreme Court of the state of Kansas, wherein the state of Kansas, on the relation of the Honorable W. A. Johnston, its attorney general, is plaintiff, and said F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, T. T. Eckert, Augustus Schell, and John Sharp, are defendants, and shall in said Circuit Court then appear and enter special bail in said cause or action, if special bail was originally requisite therein, and shall do such other proper acts as by the act or acts of Congress in that behalf are required to be done, upon the removal of said suit or cause from the said state court; and upon the further condition, namely, if the said above-named principal obligors shall enter in the said Circuit Court of the United States on the first day of its now next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by the said
179 Circuit Court, if said court shall hold that this suit was wrongfully or improperly removed thereto, and shall also then and there appear and enter special bail in the said suit, then this obligation to be void; otherwise, to remain in full force and effect.

Witness our hands and seals this 4th day of October, 1883.

ELISHA ATKINS. [Seal.]
E. H. BAKER. [Seal.]
F. GORDON DEXTER. [Seal.]
DAVID DOWS. [Seal.]
AUGUSTUS SCHELL,
By SIDNEY DILLON, [Seal.]
Attorney in fact.
S. H. H. CLARK,
By S. DILLON, [Seal.]
Attorney in fact.
JOHN SHARP,
By S. DILLON, [Seal.]
Attorney in fact.
W. L. SCOTT. [Seal.]
GEO. FRICKER. [Seal.]
FRED. L. AMES. [Seal.]
G. M DODGE. [Seal.]
SIDNEY DILLON. [Seal.]
RUSSELL SAGE. [Seal.]
THOMAS T. ECKERT. [Seal.]
JAY GOULD. [Seal.]
SOLON HUMPHREYS. [Seal.]
HENRY TISDALE. [Seal.]

STATE OF KANSAS, DOUGLASS COUNTY, *ss.*

Henry Tisdale and George Fricker, being first duly sworn, say that they are each worth more than the sum of five hundred dollars; that they each have property in the state of Kansas over and above all exemptions and subject to execution, of the value of more than five hundred dollars.

HENRY TISDALE.
GEO. FRICKER.

Subscribed and sworn to before me this 13th day of October, 1883.

[SEAL.] O. A. HADLEY,
Notary Public.
(Term expires December, 1886.)

[Indorsed:] 2970. State *vs.* Ames *et al.* Bond for removal. Approved and filed Nov. 2, 1883. C. J. Brown, clerk supreme court.

180 And afterward, on the 7th day of November, A. D. 1883, there was filed in the office of the clerk of the supreme court of the state of Kansas the petition of George G. Haven *et al.*, to be made parties defendant, which petition is in words and figures as follows, to wit:

181 In the Supreme Court of the state of Kansas.

The State of Kansas ex rel. W. A. Johnston, as attorney general, plaintiff,
vs.
The Kansas Pacific Railway Company, defendant. } No. 2969.

The State of Kansas ex rel. W. A. Johnston, as attorney general, plaintiff,
against
F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, W. L. Scott, S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, T. T. Eckert, Augustus Schell and John Sharp, calling themselves the board of directors of the Union Pacific Railway Company, defendants.

Now come George G. Haven, Isaac H. Bromley, Watson Parrish, Arthur L. Conger and Colgate Hoyt, by Wager Swayne, they attorney, and respectfully show unto the court:

1. There is now pending in this honorable court a civil action entitled "The State of Kansas *ex rel.* W. A. Johnson, as attorney general, plaintiff, *vs.* The Kansas Pacific Railway Company, defendant," for the purpose of declaring forfeited the charter of the Kansas Pacific Railway Company, for various reasons therein stated, which petition filed by the attorney general in said cause, your petitioners pray may be considererd as part of this petition, and a copy of the same is herewith shown as part of this their petition.

182 2. There is also pending in this honorable court a civil action above entitled, instituted by the state of Kansas, on the relation of its attorney general, against F. L. Ames and the other persons therein named, who are therein alleged to call themselves the board of directors of the Union Pacific Railway Company. The said petition alleges that the said Ames and other persons therein named, calling themselves the board of directors of the Union Pacific Railway Company, do now, and have since January 24, 1880, used and still do use without any warrant, charter or grant, the following liberties, privileges and franchises, viz.. that of being a railroad company, to use, operate and enjoy, and to receive the tolls, issues, profits and benefits derived from the operation and use of the Kansas Pacific Railroad, being a line of railroad beginning at Leavenworth, in the state of Kansas, and extending in a general westerly direction, by the way of the Fort Riley military reservation, to the city of Denver in Colorado, and beginning at the state line of Kansas, at a point near the junction of the Missouri and Kansas rivers, and running west to a junction with said line, at a point near the city of Lawrence, Kansas; which said liberties, privileges and franchises, it is therein alleged, the said defendants, calling themselves the board of directors of the Union

Pacific Railway Company, during all the time aforesaid, have usurped and still do usurp upon the said state, to her great damage and prejudice.

3. The said Haven states that he is, and was at the time of the commencement of these actions, a citizen of the state of New York; the said Hoyt states that he is, and was at the time of the commencement of these actions, a citizen of the state of New York; the said Bromley states that he is, and was at the time of the commencement of these actions, a citizen of the state of Connecticut; the said Parrish states that he is, and was at the time of the commencement of these actions, a citizen of the state of Nebraska; and the said Conger states that he is, and was at the time of the commencement of these actions, a citizen of the state of Ohio.

4. That the said Kansas Pacific Railway Company has
183 filed an answer in this honorable court to the petition in the said cause.

5. That in the said suit of the state of Kansas, on the relation of its attorney general, against the said Ames and others, calling themselves the board of directors of the Pacific Railway Company, the said defendants have filed an answer in this cause.

7. Your petitioners say that the object of the said suit against the Kansas Pacific Railway Company is to have a judgment that the said Kansas Pacific Railway Company has forfeited all its rights, liberties, and franchises, and that it be ousted from the same, and that the said corporation be thereupon dissolved.

7. Your petitioners say that the object of the suit against the said Ames and the other persons specified in the petition in the said cause, is to have a judgment that the said Ames and others, constituting the members of the board of directors of the Union Pacific Railway Company, appointed and elected by the stockholders thereof, have no right, liberty, privilege, or franchise to operate and use the road originally built by the Kansas Pacific Railway Company, and that they be ousted from the use, enjoyment and exercise of the right, liberty, privilege or franchises of using and operating the same.

8. Your petitioners state that it is untruly alleged in the said petition of the state of Kansas, on the relation of its attorney general, against the said Ames and others named therein, that they do call themselves and are the board of directors of the Union Pacific Railway Company, and as such claim to have, use and enjoy the liberty, privilege and franchise in the said petition mentioned. On the contrary thereof, your petitioners give the court to see and understand and be informed that the said Ames and the other persons specified in the said petition of the state of Kansas, are and claim to be only *part* of the board of directors of the Union Pacific Railway Company; that the said Ames, and the other persons specified therein, are those members of the board of directors of the Union Pacific Railway Company who are elected by the
184 stockholders. Your petitioners state that in addition to the said directors thus elected and appointed by the company,

the acts of Congress (act of July 2, 1864, section 13) provide that the President shall appoint five additional directors, who shall not be stockholders (act of July 1, 1862, section 1), and that at least one of said government directors shall be placed on each of the standing committees of said company, and at least one on every special committee that may be appointed. The act of 1864, section 13, prescribes the duties of said government directors. Each of the petitioners states that he has been appointed conformably to the said act by the President of the United States, a government director in the Union Pacific Railway Company, and has duly qualified, and is now acting as such in conjunction with the persons named in the answer of the said Ames and others filed herein, and that together with such other persons, your petitioners constitute the board of directors of the Union Pacific Railway Company.

Your petitioners state that the acts of Congress of the United States applicable to the Union Pacific Railway Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway & Telegraph Company, authorize said companies to consolidate; and that the said companies claim to have so consolidated in strict conformity with the said acts of the Congress and of law, on or about the 24th day of January, 1880, as is more fully set forth in the answers of the Kansas Pacific Railway Company, and of the said Ames, and others, filed respectively in the causes aforesaid.

Your petitioners state that they are specially appointed to protect the interests of the United States in respect of the said consolidated company, including the railroad and properties which the said consolidated company acquired from the said Kansas Pacific Railway Company. That the said Kansas Pacific Railway Company is indebted for subsidy bonds received from the United States and under the provisions of the said acts of Congress, in a sum now amounting with interest to more than twelve million ($12,000,000) dollars,
and which at the time said debt will mature, will amount to a
185 very much larger sum. That this debt is a second lien on the road of the said Kansas Pacific Railway Co. in aid of which the said subsidy bonds were granted. That it is the duty of the said consolidated company to discharge all of the obligations and to perform all the duties of the said Kansas Pacific Railway Company under the said act of Congress towards the United States, and to pay the said subsidy bonds at maturity, and to keep said railroad in repair, and to use the same for the purpose of transporting at all times, mails, troops, munitions of war, supplies and public stores, whenever required to do so by any department of the government; and to apply toward the said subsidy bonds, until the said bonds and interest are paid, at least five per centum of the net earnings of the said road to the payment thereof; and likewise to apply to the said debt during and for the whole period during which it shall remain unpaid, one-half of the compensation of all services rendered to the government by the said company.

9. Your petitioners state that if the judgment of forfeiture and

dissolution sought in the cause against the Kansas Pacific Railway is rendered as asked, and if the judgment in the cause against Ames and others shall be rendered as sought, the effect, as your petitioners are advised and fear, may or will be to extinguish the debtor to the United States in respect of the said subsidy bonds and interest, and to disable alike the Kansas Pacific Railway Company and the Union Pacific Railway Company from performing the aforesaid duties enjoined and required by the said acts of Congress toward the government of the United States and the public, and deprive the government of the benefit and advantage thereof, and prevent the application of five per cent. of the net earnings of the road and one-half of the amount received for government service, to the payment thereof.

Your petitioners aver that, by reason of the premises, they are necessary parties to the said proceedings in each of the causes above referred to; and they therefore pray that an order may be made in each of the above causes, making them parties to each of the said actions, and that they be permitted forthwith to file
186 their answer therein for the protection of the interests of the United States in the premises, and to maintain their rights, franchises, and liberties as the government directors of the said Union Pacific Railway Company.

G. G. HAVEN.

STATE OF NEW YORK,)
City and county of New York,) *ss.*

George G. Haven, being duly sworn, says: That he is one of the petitioners in the foregoing petition, and is the chairman of the government directors of the Union Pacific Railway Company. He knows the contents of the petition, and that the facts therein stated are true, as he advisedly and verily believes.

Sworn and subscribed before me, this 27th day of October, 1883.

Witness my hand and seal notarial, the day and year above written.

[SEAL.] WM. J. HARDING,
Notary public, Kings county, New York.

(Certificate filed in New York county.)

[Indorsed:] Nos. 2969—2970. Supreme Court of Kansas. The State of Kansas *ex rel.* W. A. Johnston, as attorney general, *vs.* The Kansas Pacific Railway Company. The same *vs.* F. L. Ames and others. Petition of G. G. Haven and others to intervene.

187 And afterward, on the 7th day of November, A. D. 1883, the same being one of the judicial days of the July term, A. D. 1883, of the Supreme Court of the state of Kansas, before the said court in session at the Supreme Court room, in the city of Topeka —present: Hon. Albert H. Horton, chief justice; Hon. Daniel M.

Valentine and Hon. David J. Brewer, associate justices; and C. J. Brown, clerk of said court—the following proceeding, among others, was had and entered of record as follows, to wit:

The State of Kansas ex rel., plaintiff,
vs.
F. L. Ames et al., defendants. } No. 2970.

And now on this 7th day of November, 1883, this cause coming on to be heard on the written application heretofore filed by Geo. G. Haven for himself, Isaac H. Bromley, Colgate Hoyt, A. L. Conger, and Watson Parrish, for an order to be made by this court in this cause making them parties defendant in said cause, and that they be permitted within fifteen days to file their answers therein as government directors, so called, of the Union Pacific Railway Company. J. P. Usher and A. L. Williams appeared for said motion. and W. A. Johnson, Geo. S. Green, A. A. Harris, and W. S. Rossington appeared for the plaintiff. The said motion was argued by counsel, and on consideration it was by the court ordered that the said Geo. S. Haven, Isaac H. Bromley, Colgate Hoyt, A. L. Conger, and Watson Parrish be made parties defendant therein, with leave to answer said plaintiff's petition; to which ruling of the court the said plaintiff, by its counsel, then and there duly excepted.

And afterward, on the 7th day of November, A. D. 1883, the same being one of the judicial days of the July term, A. D. 1883, of the Supreme Court of the state of Kansas, before the said court in session at the Supreme Court room, in the city of Topeka—present: Hon. Albert H. Horton, chief justice; Hon. Daniel M. Valentine and Hon. David J. Brewer, associate justices, and C. J. Brown, clerk of said court—the following proceedings, among others, was had and entered of record, as follows, to wit:

The State of Kansas ex rel., plaintiff,
vs.
F. L. Ames et al., defendants. } No. 2970.

And now, on this 7th day of November, 1883, this cause came on to be heard, on the motion of plaintiff to substitute the names of Charles Francis Adams, jr., and Andrew H. Green, for the names of Wm. L. Scott and Thos. T. Eckert, as defendants in the above-entitled cause; both parties appearing by counsel. And it appearing to the court that the terms of office as directors of the Union Pacific Railway Company of the said Wm. L. Scott and Thos. T. Eckert had expired, and that the said Andrew H. Green and Charles Francis Adams had been elected in their stead, the said motion was granted, and the said substitution is hereby duly made.

And also, on the 7th day day of November, A. D. 1883, there was filed in the office of the clerk of the Supreme Court of the

state of Kansas, the petition and bond for removal of George G. Haven et al., which is in words and figures as follows, to wit:

188 In the Supreme Court of the state of Kansas.

The State of Kansas ex rel. W. A. Johnston, as Attorney General of the state of Kansas, plaintiff,
vs.
F. L. Ames et al., calling themselves The Board of Directors of the Union Pacific Railway Company, defendants.

Petition of the Government Directors for removal of cause to the Circuit Court of the United States for the district of Kansas.

To the said Supreme Court:

Your petitioners, George G. Haven, Isaac H. Bromley, Colgate Hoyt, A. L. Conger and Watson Parrish, state that they have filed in this court their petition, stating that they have an interest in and are necessary parties to said cause, to which petition they now refer, and make the same part hereof.

That an order has been asked that your petitioners be made parties to the said action above entitled, and be permitted to answer therein.

That your petitioners are ready to answer therein.

That petitioners show that they are government directors of the Union Pacific Railway Company, duly appointed and commissioned by the President of the United States, and qualified and acting as such.

That your petitioners, the said Haven and Hoyt, are, and were at the commencement of said suit, citizens of the state of New York; that the said Parrish is, and was at the time of the commencement of said suit, a citizen of the state of Nebraska; that said Conger is, and was at the time of the commencement of said suit, a citizen of the state of Ohio; that the said Bromley is, and was at the time of the commencement of said suit, a citizen of the state of Connecticut.

That the matter and amount in dispute in this suit exceeds as to each of your petitioners, exclusive of costs, the sum of value of five hundred dollars. That the defendant F. L. Ames and the
189 other defendants mentioned in the said petition of the said state of Kansas are the directors of the Union Pacific Railway Company elected by the stockholders of the said company, and as such have filed their petition for the removal of the said cause to the Circuit Court of the United States; to which said petition your petitioners now refer, and pray that the same may be taken and considered as part of this their petition.

Your petitioners show that this is a suit arising under the constitution and laws of the United States, to wit, under the act of Congress of July 1, 1862, referred to in the pleadings herein, and the

various acts of Congress amendatory thereof and supplemental thereto. That its decision involves the true and correct construction of the said laws of the United States and the rights, titles, and obligations of your petitioners and the other defendants in the said cause under the said constitution and laws of the United States.

Your petitioners also aver that they, as well as the other defendants, have a good and sufficient defense to this suit arising under the constitution and laws of the United States, and that its decision necessarily involves the true construction and effect of the said act of Congress and the rights and titles of your petitioners thereunder.

That the said Union Pacific Railway Company was, at the commencement of this suit, and still is a corporation other than a banking corporation, organized under the laws of the United States, to wit, under the aforesaid act of Congress of July 1, 1862, and the various acts of Congress amendatory thereof and supplemental thereto.

That this suit is against the other said directors and against your petitioners as members of such corporation and as directors thereof, and is for an alleged liability of your petitioners as such members and as such directors, and that your petitioners have a defense to this suit and the cause of action of the plaintiff herein as against the said plaintiff arising under the constitution of the United States, and under the laws of the United States hereinbefore referred to. That this suit has not been tried, and is now pending for trial in this honorable court, and that this application is made at or
190 before the term at which it can be first tried, and before the trial thereof.

Your petitioners join with the said Ames and the other directors of the said company in praying for the removal of the cause into the Circuit Court of the Circuit Court.

Your petitioners now, and at the time of filing this their petition in this court, offer good and sufficient security for their entry into the Circuit Court of the United States for the district of Kansas, on the first day of its next session, of copies of all process against them, and all pleadings, depositions, testimony and other proceedings in this cause, and also for their appearing and entering special bail in the said cause, if special bail was originally requisite therein.

And your petitioners make and file herein a bond, giving good and sufficient surety for their entering in the Circuit Court of the United States for the district of Kansas, on the first day of its now next session, a copy of the record in this suit, and for paying all costs that may be awarded by the said Circuit Court, if the said court shall hold that this suit was wrongfully or improperly removed thereto, and for their there appearing and entering special bail in this suit, if special bail was originally and requisite therein.

Wherefore your petitioners pray this honorable court to accept

this their petition and their surety and their bond, and proceed no further in the suit.

GEORGE G. HAVEN.
ISAAC H. BROMLEY.
COLGATE HOYT.
A. L. CONGER.
WATSON L. PARRISH.
By WAGER SWAYNE,
Their Attorney.

STATE OF NEW YORK, }
County and city of New York, } *ss.*

George G. Haven, being duly sworn, says that he is one of the above-named petitioners; that he has read the foregoing petition, and knows the contents thereof, and that the same is true
191 of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

G. G. HAVEN.

Sworn to before me this 27th day of October, 1883. Witness my hand and seal notarial, hereto set the day and year last above written.

[SEAL.] HERBERT E. DICKSON,
Notary public, city and county of New York.

[Indorsed:] Supreme Court of Kansas. The state of Kansas *ex rel.* W. A. Johnston, as attorney general, *vs.* F. L. Ames and others. Petition for removal. Filed November 7, 1883. C. J. Brown, clerk Supreme Court. No. 2970.

I, C. J. Brown, clerk of the Supreme Court, do hereby certify that the above and foregoing is a full, true and correct copy of the petition for removal, filed in this court, as the same now remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Topeka, this day of 1883.

Clerk Supreme Court.

Know all men by these presents, that we, George G. Haven, Isaac H. Bromley, Watson L. Parrish, Colgate Hoyt, and A. L. Conger, as principals, and ———, as sureties, are hereby bound unto the state of Kansas, or whom it may concern, in the penal sum of five hundred dollars, to the payment of which we jointly and severally bind ourselves hereby. The condition of this obligation is such, that if the above-named principal obligors shall enter

and file or cause to be entered and filed in the Circuit Court of the United States for the district of Kansas, on the first day of its next session, copies of all process against it, and of all pleadings, depositions, testimony, and other proceedings in a certain suit
192 or action now pending in the Supreme Court of the state of Kansas, wherein the state of Kansas, on the relation of W. A. Johnston, its attorney general, is plaintiff, and the said F. L. Ames and others, including the obligors in this bond mentioned, are defendants, and shall in said Circuit Court then appear and enter special bail in the said cause or action, if special bail was originally requisite therein, and shall do such other proper acts as by the act or acts of Congress in that behalf are requisite to be done upon the removal of the said cause from the said state court; and upon the further condition, to wit, that if the above-named principal obligors shall enter in the said Circuit Court of the United States, on the first day of its now next session, a copy of the record in said suit, and shall well and truly pay all the costs that may be awarded by the said Circuit Court, if said court shall hold that this suit was wrongfully or improperly removed thereto, and shall also there and then appear and enter special bail in the said suit if special bail was originally required, then this obligation to be void; otherwise to remain in full force and effect.

Witness our hands and seals this 27th day of October, 1888.

Sealed and delivered in the presence of Wm. J. Harding, as to G. G. Haven and C. Hoyt.

G. G. HAVEN. [SEAL.]
ISAAC H. BROMLEY,
By WAGER SWAYNE,
His attorney in fact. [L. S.]

W. L. PARRISH,
By WAGER SWAYNE,
His attorney in fact. [L. S.]
COLGATE HOYT. [SEAL.]
A. L. CONGER,
By WAGER SWAYNE,
His attorney in fact. [L. S.]

JOHN R. MULVANE. [L. S.]
JOAB MULVANE. [L. S.]

[Indorsed:] 2970. Supreme Court of Kansas. The state of Kansas *ex rel.* W. A. Johnston, as attorney general, *vs.* F. L. Ames *et al.* Bond for removal. Filed Nov. 7, 1883. C. J. Brown, clerk Supreme Court.

193 And afterwards, on the 7th day of November, A. D. 1883, the same being one of the regular judicial days of the July term A. D. 1883, of the Supreme Court of the state of Kansas, before said court in session at the Supreme Court room in the city of To-

peka—Present: Hon. Albert H. Horton, chief justice; Hon. Daniel M. Valentine and Hon. David J. Brewer, associate justices, and C. J. Brown, clerk of said court—the following proceeding, among others, was had and entered of record, as follows, to wit:

The State of Kansas ex rel., &c., plaintiff,
vs.
F. L. Ames et al., defendants. } No. 2970.

And now, to wit, on this 7th day of November, 1883, the petition of the respondent to remove this cause to the United States Circuit Court for the district of Kansas, came on to be heard. The plaintiff appeared by W. A. Johnston, attorney general, and W. H. Rossington, A. A. Harris and Geo. S. Green, its attorneys; and the respondents appeared by J. P. Usher and A. L. Williams, their attorneys, which said application and petition was argued by counsel and duly considered by the court; and the court finds that the sureties upon the bond for removal in this case are sufficient.

THE STATE OF KANSAS, } *ss:*
Supreme Court, }

I, C. J. Brown, clerk of the Supreme Court of the state of Kansas, do hereby certify that the above and foregoing is a true and complete copy of the pleadings and of the record of proceedings had in the above-entitled cause, as the same remain of record and on file in my office.

In witness whereof I have hereunto subscribed my name and affixed the seal of the Supreme Court of the state of Kansas, at my office in Topeka, this 24th day of November, A. D. 1883.

[SEAL.] C. J. BROWN,
Clerk of the Supreme Court of the State of Kansas.

[Indorsed:] No. 4441. The state of Kansas ex. rel. W. A. Johnston, as attorney general of the state of Kansas, *vs.* F. L. Ames et al. Petition. Filed Nov. 24, 1883; A. S. Thomas, clerk, by Frank J. Thomas, deputy.

194 United States Circuit Court, district of Kansas.

The State of Kansas ex rel. W. A. Johnston, as attorney-general, plaintiff,
against
F. L. Ames and others, defendants.

Answer of Government Directors.

And now comes George G. Haven, Isaac H. Bromley, Watson Parrish, Arthur L. Conger and Colgate Hoyt, by Wager Swayne, their attorney, and having first by leave of the court been made parties defendant to the petition herein filed, for answer say:

FIRST. They deny, upon information and belief, that Frederick L. Ames and others named in said petition as defendants call themselves the board of directors of the Union Pacific Railway Company, save as hereinafter set forth.

And these defendants, further answering, say that the Union Pacific Railway Company is a corporation created by an act of the Congress of the United States, approved July 1st, 1862, and other acts amendatory and supplemental thereto, and particularly
195 an act approved July 2d, 1864. In and by said act of July 1st, 1863, it is provided:

"That at the time of the first and each triennial election of the directors by the stockholders, two additional directors shall be appointed by the President of the United States, who shall act with the body of the directors and be denominated directors on the part of the government, and that any vacancy happening in the government directors at any time may be filled by the President of the United States."

And in and by said act of July 2d, 1864, it is further provided:

"That at and after the next election of directors the number of the directors to be elected by the stockholders shall be fifteen; and the number of directors to be appointed by the President shall be five; and the President shall appoint three additional directors to serve until the next regular election, and thereafter five directors. At least one of the government directors shall be placed on each of the standing committees of said company, and at least one on every special committee that may be appointed."

And these defendants, further answering, say that each of them is at this time one of the five directors contemplated by the aforesaid provision of the said act of July second, 1864, appointed by the President of the United States, and duly commissioned and qualified.

And these defendants, further answering, say that the provisions of said act are of valid and binding force upon the Union Pacific Railway Company, and that the individual defendants named in said petition are not and do not call themselves the board of directors of the Union Pacific Railway Company, save only when acting in conjunction with these defendants as required and provided by taid act.

And these defendants, further answering, admit that calling themselves, together with the said Frederick L. Ames and others named as individual defendants in the petition herein filed, the
196 board of directors of the Union Pacific R. Co., they and their predecessors have, ever since Jan. 24, 1880, used and still do use the liberties, privileges, and franchises of being a railroad company, and of using, operating, enjoying, and receiving the tolls, issues, profits, and benefits derived from the operation and use of the railroad of the Kansas Pacific Railway Company, which said line and lines of railroad, with all properties, equipments, easements, subserviences, privileges, rights, liberties, and franchises

were, prior to the said 24th day of January, 1880, used, occupied, controlled, and enjoyed by the Kansas Pacific Railway Company, but these defendants deny that they have at any time or still do use the same without any warrant, charter, or grant, as in said petition alleged; and further deny that the said line or lines of railroad so operated and used by these defendants are correctly described in said petition, and aver that the said line of railroad extends from the Missouri river at the mouth of the Kansas river, on the south side thereof, so as to connect with the Pacific Railroad of Missouri, and from such point of connection in the state of Missouri, by way of Lawrence and Topeka, in the state of Kansas, or the bank of the Kansas river opposite said towns, to a connection at the city of Denver, Colorado, with the railroad formerly of the Denver Pacific Railway and Telegraph Company, a corporation of the territory of Colorado, and thence by means of the railroad formerly of said Denver Pacific Railway and Telegraph Company to a point of connection with the main line of the Union Pacific Railway Company at Cheyenne, in said territory of Colorado, the said railroad of the Kansas Pacific Railway Company, including also a branch of said railroad from the city of Leavenworth, Kansas, to and uniting with the main stem at or near the city of Lawrence, Kansas.

197 And these defendants, further answering, deny that the said Kansas Pacific Railway Company derived its right to use, enjoy, employ, and exercise the said line and lines of railroad, with their properties, equipments, easements, subserviences, privileges, rights, liberties, and franchises, from or under an act passed in the year 1855, at a session of the legislature of the territory of Kansas, which act was entitled "An act to incorporate the Leavenworth, Pawnee and Western Railroad Company," or from or under the further act passed by the legislature of the territory of Kansas in the year 1857, at a session of said legislature, supplemental to said act of 1855, entitled "An act supplemental to an act entitled 'An act to incorporate the Leavenworth, Pawnee and Western Railroad Company,'" as in said petition alleged.

And these defendants, further answering, say that on and before the 4th day of March, A. D. 1862, it was well known to the people of the state of Kansas, and to their state officers and legislature, that it was in contemplation by the people of the United States, through their senators and representatives in Congress assembled, to provide for the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government of the United States the use of the same for postal, military, and other purposes, and to that end to provide by an act of the Congress of the United States that certain persons in said act to be named should be and become a body politic and corporate of the United States, and should have full power and authority as such to construct and operate the said railroad and telegraph, and use, enjoy, and operate the same, subject only to the control and

paramount authority of the United States forever; and for that purpose to have the rights, powers, and privileges of a railway company.

On the said 4th day of March, 1862, the state of Kansas, by an act of its legislature of that date, which is hereby referred to and made a part hereof, petitioned the Congress of the United
198 States that its forthcoming act to provide for the construction of the said railroad and telegraph, should be so framed as to require that the route of the said railroad and telegraph from the Missouri river to the Pacific ocean should be by way of Fort Riley, in said state; and should further provide that any railroad company then or thereafter incorporated, might unite in the construction of said railroad upon filing their assent to said act; and should further provide that all of the railroads named therein and assenting thereto, upon the application of any two of them, might form themselves into one consolidated company, upon such terms as might be just and equitable between them, and as provided in said act.

In and by said act of the legislature of Kansas of March 4th, 1862, it was further provided that the senators and representatives in Congress of said state should forthwith lay the same before the Congress of the United States, which was accordingly done.

Afterwards, to wit, on the first day of January, 1862, the Congress of the United States, by an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," and as requested by the state of Kansas as aforesaid, did authorize the Leavenworth, Pawnee and Western Railroad Company, being a railroad company originally incorporated by the legislature of the territory of Kansas, to unite in the construction of said railroad and telegraph line. The said act of July 1st, 1862, however, did not permit said company to construct the same in the exercise of the charter powers conferred by an act of the legislature of the territory of Kansas, entitled, "An act to incorporate the Leavenworth, Pawnee and Western Railroad Company," above referred to, or conferred by a further act of said legislature, entitled, "An act supplemental to the act last above mentioned,"
199 as hereinbefore referred to, which powers were to construct a railroad from the west bank of the Missouri river, in the town of Leavenworth, thence west to the town of Pawnee, or to some point feasible, and near to the government reservation for Fort Riley, with the privilege of extending the same to the western boundary of the territory. Also, from some favorable point on the Leavenworth, Pawnee and Western Railroad, and following the most practical route southwardly to a termination on the southern boundary of the territory of Kansas, at some point where an easy connection might be had with a line of railroad extending through the Indian territory and state of Texas to the gulf of

Mexico; but the said act of Congress required said company to unite in the construction of said railroad and telegraph from the Missouri river to the Pacific ocean only upon the terms and conditions in said act provided, and in the exercise of the powers conferred thereby, and to construct the same from a connection with the Pacific Railroad of Missouri at or near the mouth of the Kansas river, as aforesaid, to a point on the one hundredth meridian in the territory of Nebraska, to be further defined as provided in said act; and thereafter to hold, use, and enjoy the same upon the same terms and conditions as the body politic and corporate created by said act, and under the authority and subject to the paramount control of the United States.

And in and by said act of Congress of July 1st, 1862, it was further provided, as requested by the state of Kansas as aforesaid, that all of the railroad companies named therein and assenting thereto, or any two or more of them, were authorized to form themselves into one consolidated company, and should thereafter proceed to construct said railroad and branches and telegraph lines upon the terms and conditions provided in said act.

And it was further provided, in and by said act, that the Leavenworth, Pawnee and Western Railroad Company, upon
200 filing its assent thereto, might have, hold, and enjoy the privileges and benefits provided by said act, but that the Congress of the United States might at any time, having due regard for the rights of the companies named therein, add to, alter, amend, or repeal said act.

And these defendants further say that thereafter said Leavenworth, Pawnee & Western Railroad Company did file its acceptance of the provisions of said act of Congress of July 1st, 1862, and did proceed with the knowledge and approval of the United States, and of the state of Kansas, and of the proper authorities thereof, in the construction of said railroad as provided by said act and under the authority conferred thereby.

And these defendants, further answering, say that, relying, as these defendants are informed and believe, on the power and authority of the said Leavenworth, Pawnee & Western Railroad Company under the authority conferred on it by the said act of July 1st, 1862, and the assent and acquiescence of the state of Kansas to the provisions of said act, as declared by said state and conveyed to the Congress of the United States by the act of the legislature of said state, passed March 4th, 1862, as hereinbefore set forth; and also relying upon the paramount authority and control over said company in the exercise of its right to construct, use and operate said railroad, which had been secured to the United States by the provisions of said act of Congress of July 1st, 1862, and by the consent to and acquiescence in such paramount authority and control, given by the state of Kansas through its legislature, as aforesaid, and further relying upon the right and power of the United States to secure and enforce by means of such authority and control the

operation and use of said railroad by the people and government of the United States, and as one connected and continuous line, as provided in said act, the United States thereupon made to the Union Pacific Railroad Company, eastern division, large and valuable grants of land, and further issued to said company the bonds of the United States for a great sum of money loaned to said company in aid of the construction of its railroad, as aforesaid, which sums of money are still largely owing and unpaid.

201 And these defendants, further answering, say that not only was it among the provisions of said act of Congress of July 1st, 1862, that all of the companies which should unite in the construction of such railroad and telegraph might consolidate themselves into one company, as therein provided, but it was further expressly required by said act that the whole line of said railroad and branches and telegraph should be operated and used for all purposes of communication, travel and transportation, so far as the public and government are concerned, as one connected, continuous line. And in the legislation of Congress amendatory of and supplemental to said act of July 1st, 1862, it is made the duty of all the companies uniting in the construction of any part of said railroad and telegraph to operate and use the whole of said railroad, branches and telegraph for all purposes of communication, travel and transportation, so far as the public and government are concerned, as one connected, continuous line; and these defendants aver that all of the provisions in said act by means of which the same might be more fully accomplished or secured, including the power of consolidation, as before set forth, were conditions and stipulations which to that end were imposed by the United States, and to which the state of Kansas had consented in advance by an act of its legislature as aforesaid.

And these defendants, further answering, say that the name of the Leavenworth, Pawnee and Western Railroad Company was afterward changed to the Union Pacific Railway Company, eastern division. At what time or by what authority this change was made these defendants are not advised; they aver, however, that

202 such change and authority therefor was fully known and recognized, both by the state of Kansas and by the United States.

And these defendants, further answering, say that on the first day of March, 1864, the state of Kansas, fully recognizing that by virtue of the several acts of legislation hereinbefore set forth, the said Union Pacific Railway Company, eastern division, had united in the construction of the railroad and telegraph from the Missouri river to the Pacific ocean, which said railroad and telegraph were being constructed under the authority of and were under the paramount control of the United States, did, by an act of its legislature, taking effect on the said first day of March, 1864, petition and request the Congress of the United States that, in the exercise of its right aforesaid to add to, alter, amend, or repeal the said act

of July 1st, 1862, require said Union Pacific Railway Company, eastern division, to construct its railroad through Kansas by way of certain designated places in said state. The said act of the legislature of Kansas of March 1st, 1864, is hereby referred to and made part hereof.

And on the second day of July, 1864. by an act which on that day was approved, the Congress of the United States, in the exercise of its right as aforesaid and as requested by said state of Kansas, did require the said Union Pacific Railway Company, eastern division, to build its said railroad through Kansas by way of certain of the places designated by said state as aforesaid. And to enable said railroad company to more speedily construct its railroad and more fully perform its other obligations in respect thereto, conferred upon said company additional grants and further benefits, as provided by said act.

All of which these defendants are informed and believe were done by the United States in reliance upon its paramount authority and control secured to it by the provisions of the aforesaid acts of Congress, and the consent and acquiescence of the state of Kansas, as hereinbefore set forth.

203 And these defendants, further answering, say that afterwards, to wit, on the 9th day of February, 1867, the railroad of said Union Pacific Railway Company, eastern division, being yet incomplete, the state of Kansas, by a legislative act which on that day took effect, represented to the Congress of the United States that the aid theretofore granted to said company was insufficient to enable said company to construct its railroad to a junction with the main line of said Union Pacific Railroad as rapidly as the interests of said state and of the United States required; and thereupon urgently requested the Congress of the United States to grant further aid to said company upon such terms and conditions as would secure the government against loss, and would assure the speedy completion of said railway to a junction with the main line, as aforesaid.

And afterwards, to wit, on the 7th day of February, 1868, the state of Kansas, by a legislative act which took effect on that day, further presented to the Congress of the United States that an extension of the Union Pacific Railway, eastern division, to a connection by way of Denver city with the main line of said Union Pacific Railway Company was demanded by considerations of great consequence to the people of said state and of the United States, and renewed its request that such legislation by way of further grants and otherwise as would assure the speedy completion of said railway to a junction with the main line of the Union Pacific Railroad, as aforesaid.

Said two last-mentioned acts of the legislature of Kansas are hereby referred to and made part hereof.

And afterwards, to wit, on the third day of March, 1869, the Congress of the United States, by an act which on that day was

approved, as these defendants aver on information and belief, still relying on the right and control secured to the United States
204 by the acts of Congress and of the legislature of Kansas hereinbefore set forth, and relying also upon the acquiescence of said state in the construction of said railroad by said Union Pacific Railway Company, eastern division, upon the route designated by said act and under the terms and provisions thereof, and the ability of said company by means of the privilege and powers by said act conferred, including the power of consolidation hereinafter referred to to perform all the requirements of said act, and upon the power of the United States to secure as aforesaid the use and operation of the whole of said railroad and branches as one connected, continuous line, did extend or confirm to said company large additional grants of land in aid of the completion of said railroad, and to the same end did confer upon said company further benefits as in said act are more fully set forth, and further authorized the construction of the railroad of said company to a connection with the railroads of the Union Pacific system at the city of Denver, in the territory of Colorado, as requested by said state. And these defendants, further answering, say that the said Kansas Pacific Railroad Company thereupon completed its said railway to a connection with the railroad of the Union Pacific Railway Company at Denver, Colorado, as required by said act, and said railroad was accepted by the United States as having been built and completed in all respects under and as required by the acts of Congress hereinbefore set forth.

And on the same day, to wit, on the third day of March, 1869, the Congress of the United States, in the further exercise of its paramount control over said Union Pacific Railway Company, eastern division, did change the name of said company to the Kansas Pacific Railway Company.

And these defendants, further answering, say that afterwards, to wit, on the 7th day of February, 1874, the state of Kansas, by an act of the legislature which took effect on that day, did fur-
205 ther represent to the Congress of the United States that for want of equal advantages and facilities, such as would result from the operation and use of said Union Pacific Railroad and branches as one connected and continuous line, the said Kansas Pacific Railway Company was compelled to discriminate against the citizens of the state of Kansas, and was compelled to support a continuous line of seven hundred and forty-five (745) miles of completed railway from the rates and earnings of about three hundred miles of paying road; and said railroad company was thereby compelled to advance their rate of transportation for freight and passengers within the state, and that the commercial and agricultural interests of the state of Kansas were seriously retarded and injured thereby.

And thereupon the Congress of the United States was by said state of Kansas requested to take such measures as would at an

early day compel the Union Pacific Railway Company to afford facilities for the transportation of freight and passengers, both in regard to rate, time, and transportation, without discrimination or injury to said Kansas Pacific, formerly Union Pacific Railway, eastern division.

And thereafter, to wit, on the 20th day of June, 1874, the Congress of the United States did, by an act which on that day was approved, require the several companies which by the aforesaid act of July 1st, 1862, were authorized to unite in the construction of the said railroad and telegraph from the Missouri river to the Pacific ocean, and each and every of the officers and agents of said company, on pain of fine and imprisonment, to permit the said railroad and telegraph and branches to be operated and used as one continuous line, and to have and enjoy equal advantages and facilities as to rate, time, and transportation, without any discrimination of any kind in favor of or adverse to the route and business of any or either of said companies.

206 And it further provided that for all the purposes of the act of July 1st, 1862, and of the acts amendatory thereof, the railway of the Denver Pacific Railway and Telegraph Company should be deemed and taken to be a part of the extension of the railroad of said Kansas Pacific Railway Company to the point or junction thereof with the road of the Union Pacific Railway Company at Cheyenne, as provided in the act of March 3d, 1869.

And these defendants, further answering, say on information and belief, that notwithstanding the provisions of said last-mentioned act of Congress, the said Kansas Pacific Railway, the disabilities and injuries to the Kansas Pacific Railway Company, and to the people of Kansas and of the United States, continued and increased, and the said Kansas Pacific Railway was not and could not be operated as one connected and continuous line with the Union Pacific Railroad as required by law.

And these defendants, further answering, say that afterwards, to wit, on the said 24th day of January, 1880, the said Kansas Pacific Railway Company, the Denver Pacific Railway & Telegraph Company, and the Union Pacific Railroad Company, formed themselves into one consolidated company, to wit, the Union Pacific Railway Company.

And these defendants, further answering, say, upon information and belief, that said companies did so unite and consolidate their organizations in a manner which was not incompatible with the aforesaid acts of Congress, or with the laws of Kansas or of Colorado, and did adopt such corporate name and style as they agreed on, with a capital stock not exceeding the actual cost of the roads so consolidated, and did file a copy of such consolidation in the department of the interior, and thereupon such consolidation was consented to and was fully adopted and ratified by the United States.

"And thereupon such organization, so formed and consolidated, did succeed to, possess, and become entitled to receive from the

Government of the United States, all and singular the grants,
207 benefits, immunities, guarantees, acts and things to be done and performed, and became and was subject to the same terms, conditions, restrictions and requirements which said companies, at the time of such consolidation, were or might be entitled or subject to under said acts of Congress, in place and substitution of said companies, so consolidated respectively. And all other provisions of said act, so far as applicable, relating or in any manner appertaining to the companies so consolidated, or either thereof, did apply and become of force as to such consolidated organization."

And these defendants, further answering, say, that the matter in dispute herein between is, as between each of these defendants and the state of Kansas, of more than the sum or value of five hundred dollars; and that that there is also, as matter in dispute herein between these defendants, as directors of the Union Pacific Railway Company, and the state of Kansas, which exceeds the sum or value of five hundred dollars; and that there is also a matter in dispute herein between these defendants as directors in said company on the part of the United States, and the state of Kansas, which exceeds the sum or value of five hundred dollars; and furthermore, that each of these defendants and of the remaining directors of said Union Pacific Railway Company is a citizen of the United States other than the state of Kansas.

For further answer these defendants say that all allegations in said petition, not herein expressly admitted, are denied, and they ask that the plaintiff be required to make strict proof of the same.

These defendants, though protesting and insisting that the said petition is insufficient, have nevertheless fully answered the same, and pray that said petition may be dismissed, and that they may recover their costs in this behalf incurred, and may have all proper relief.

By WAGER SWAYNE,
Their Attorney.

208 THE STATE OF NEW YORK, }
City and county of New York, } *ss.*

George G. Haven, being sworn, says that he is one of the defendants, and is chairman of the government directors of the Union Pacific Railway Company; that he knows the contents of the foregoing answer, and the same are true as he verily believes.

GEORGE G. HARRIS.

THE STATE OF NEW YORK, }
City and county of New York, } *ss.*

I, William J. Harding, notary public in and for said city, county and state, do herby certify that the above and foregoing answer and verification was signed by the said George G. Haven in my

presence, and sworn to by him before me, this sixteenth day of November, 1883.

Witness my hand and official seal hereto set the date last above written.

WM. J. HARDING,
Notary Public, aforesaid.

THE STATE OF NEW YORK,
City and county of New York, } *ss.*

Patrick Keenan, clerk of the city and county of New York, and also clerk of supreme court for the said city and co. being a court of record, do hereby certify that William J. Harding has filed in the clerk's office of the county of New York, a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was at the time of taking the annexed deposition, duly authorized to take the same, and that I am well acquainted with the handwriting of said notary public, and verily believe that the signature to the annexed certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county this 16th day of Nov., 1883.

[SEAL.] PATRICK KEENAN, *Clerk.*

209 [Indorsed:] Filed Nov. 22, 1883. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

210 In the Circuit Court of the United States, district of Kansas.

The State of Kansas ex rel. W. A. Johnston, attorney general, plaintiff,
vs.
Frederick L. Ames et al., defendants.

The State of Kansas ex rel. W. A. Johnston, attorney general, plaintiff,
vs.
The Kansas Pacific Railway Company, defendant.

It hereby stipulated and agreed by and between the above parties by their counsel, that the said plaintiff may plead to the jurisdiction of the above-entitled court in said causes by filing motions to remand; but such motions shall be filed within three days from the date hereof.

It is further agreed that said motions to remand shall be heard at a time and place to be agreed upon that shall be convenient to the judges of said court and counsel; said time to be not earlier than Dec. 11, 1883, and not later, unless otherwise ordered by the

judges, than the middle of the month of January, 1884; the judges to fix the time and place of hearing if counsel cannot agree upon such time and place.

It is further stipulated and agreed that until said motions to remand are heard and determined by said Circuit Court that no proceedings of any kind shall be had or taken by said plaintiff, by himself or counsel, in the Supreme Court of the state of Kansas, in either of said above-entitled causes, and it is agreed by said defendants that no default of the plaintiff in pleading or otherwise in said Supreme Court shall be taken advantage of by said defendants; and it is further agreed that failure to plead or appear by either party in said Supreme Court shall not operate as or be held a default, but that said cases may be continued in such Supreme Court until said motions to remind are heard and determined. It is the intention and agreement of the said parties that the *status quo* in both
211 the above-entitled causes, both in the state and circuit court shall be held to be preserved until said motions to remand are heard and determined as aforesaid by the Circuit Court.

At the time of the hearing of the motions to remand, the parties reserve the right to make any motions if the judges will hear the same necessary to preserve the cases for final hearing or trial.

This stipulation shall not be construed as an admission by the defendants in either of said suits of the jurisdiction of the state court or as admission by the plaintiff in either of said suits of the jurisdiction of the said Circuit Court of the United States. Any orders or judgments of the court or judges may be entered *nunc pro tunc* as of this term. This stipulation to be entered of record, both in the State and the Circuit Court.

Dated at Topeka, Kansas, this 27th day of November, 1883.

W. A. JOHNSTON,
Attorney-General.

JOHN F. DILLON,
J. P. USHER,
A. L. WILLIAMS,
For all of the Defendants except the Government Directors.

WAGER SWAYNE,
For Government Directors.

(Endorsed:) No. 4440–4441, State of Kansas ex rel. W. A. Johnston, att'y gen'l, *vs.* F. L. Ames et al.; same *vs.* Kan. Pac. R.W. Co.; stip. as to hearing; filed Nov. 27, 1883; A. S. Thomas, clerk.

212 In the Circuit Court of the United States for the district of Kansas.

The State of Kansas ex rel. W. A. Johnston, as attorney general, plaintiff
vs.
F. L. Ames et al., calling themselves the board of directors of the Union Pacific Railway Company, defendants. } Motion to remand.

Now comes the plaintiff herein and moves the court to remand this cause to the Supreme Court of the state of Kansas, for the reason that it appears from the record thereof that said cause is not removable, and that this court is without jurisdiction to try and determine the same.

W. A. JOHNSTON,
Attorney-General.

C. A. SEWARD,
W. H. ROSSINGTON,
GEO. S. GREEN,
A. A. HARRIS,
Of Counsel.

(Endorsed:) No. 4441; The state of Kansas ex rel. W. A. Johnston, as att'y general, *vs.* The Kansas Pacific Railway Company; motion to remand; filed Nov. 30, 1883; A. S. Thomas, clerk.

213 In the Circuit Court of the United States for the district of Kansas.

The State of Kansas ex rel. W. A. Johnston, as attorney general,
vs.
F. L. Ames et al., calling themselves the board of directors of the Union Pacific Railway Company.

This cause came on to be heard upon the motion of the plaintiff to remand the cause to the Supreme Court of the state from whence it was removed; and being argued by counsel, and the court being fully advised in the premises, doth now order and adjudge that the said motion be, and the same is hereby, sustained, and said cause remanded to the Supreme Court of the state of Kansas. The said defendants then and there duly excepted to the said order and judgment.

GEO. W. McCRARY,
Circuit Judge.

(Endorsed:) No. 4441; order remanding to the Supreme Court of the state of Kansas; filed January 7, 1884; A. S. Thomas, clerk.

UNITED STATES OF AMERICA, *District of Kansas*, } *ss:*

To the honorable justices of the Supreme Court of the United States:

And now comes F. L. Ames et al. by John F. Dillon, J. P. Usher and A. L. Williams, their attorneys, and complains that in the record and proceedings, and also in the rendition of judgment in a suit between the State of Kansas ex rel. W. A. Johnston, as attorney general, plaintiff, and the said F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, Charles Francis Adams, jr., S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, Andrew H. Green, Augustus Schell, John Sharp, Geo. G. Haven, Isaac H. Bromley, Colgate Hoyt, A. L. Conger and Watson Parrish, calling themselves the board of directors of the Union Pacific Railway Company, defendants, tried in the Circuit Court of the United States for the district of Kansas at the June term thereof, A. D. eighteen hundred and eighty-three, and in which judgment was rendered against the said F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, Charles Francis Adams, jr., S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, Andrew H. Green, Augustus Schell, John Sharp, Geo. G. Haven, Isaac H. Bromley, Colgate Hoyt, A. L. Conger and Watson Parrish, calling themselves the board of directors of the Union Pacific Railway Company, on the 7th day of January, 1884, by which judgment said cause was remanded from said Circuit Court to the Supreme Court of the state of Kansas, in which it was originally begun, manifest error hath intervened to the great damage of said F. L. Ames, Elisha Atkins, Ezra Atkins, Ezra H. Baker, F. G. Dexter, Charles Francis Adams, jr., S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, Andrew H. Green, Augustus Schell, John Sharp, Geo. G. Haven, Isaac H. Bromley, Colgate Hoyt, A. L. Conger and Watson Parrish, calling themselves the board of directors of the Union Pacific Railway Company.

Wherefore it prays for the allowance of a writ of error, and such other process as may cause the same to be corrected by the Supreme Court aforesaid.

Allowed.

GEO. W. McCRARY,
Circuit Judge.

(Endorsed:) No. 4441. The state of Kansas ex rel. W. A. Johnston, as attorney general of the state of Kansas, *vs.* F. L. Ames et al.; order allowing writ of error; filed January 7, 1884; A. S. Thomas, clerk.

214 In the Supreme Court of the United States.

Know all men by these presents, that we, F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, S. H. H. Clark, G. M.

Dodge, Charles Francis Adams, jr., Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, Andrew H. Green, Augustus Schell, John Sharp, George G. Haven, Isaac H. Bromley, Colgate Hoyt, A. L. Conger and Watson Parrish as principals, and A. L. Williams and H. P. Dillon as sureties, are held and firmly bound unto the state of Kansas in the sum of five hundred dollars, to be paid to said state of Kansas, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, our and each of our heirs, executors, and administrators, by these presents.

Sealed with our seals, and dated this seventh day of January, 1884.

Whereas, the above-named F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, S. H. H. Clark, G. M. Dodge, Charles Francis Adams, jr., Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, Andrew H. Green, Augustus Schell, John Sharp, George G. Haven, Isaac H. Bromley, Colgate Hoyt, A. L. Conger and Watson Parrish have prosecuted a writ of error in the Supreme Court of the United States to reverse a judgment rendered in the above-entitled action by the Circuit Court of the United States for the district of Kansas, remanding said cause to the Supreme Court of the state of Kansas, from whence taken—

Now, therefore, the condition of this obligation is such, that if the above-named F. L. Ames et al. shall prosecute their said writ of error to effect, and answer all costs if it shall fail to make good their plea, then this obligation shall be void, otherwise in full force and virtue.

F. L. AMES
And all the other def'ts above-named,
By A. L. WILLIAMS, *their Attorney.*
A. L. WILLIAMS.
H. P. DILLON.

Signed, sealed, and delivered in presence of—

This bond approved Jan. 7, 1884.

C. G. FOSTER, *Judge.*

(Endorsed:) No. 4411. The state of Kansas ex rel. W. A. Johnston, as attorney general of the state of Kansas, *vs.* F. L. Ames et al; bond; filed January 7, 1884; A. S. Thomas, clerk.

215 UNITED STATES OF AMERICA, *ss.*

To the state of Kansas and W. A. Johnston, attorney general of said state of Kansas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 14th day of January next, pursuant to a writ of error filed in

the clerk's office of the Circuit Court of the United States for the district of Kansas, wherein F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, Charles Francis Adams, jr., S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, Andrew H. Green, Augustus Schell, John Sharp, Geo. G. Haven, Isaac H. Bromley, Colgate Hoyt, A. L. Conger and Watson Parrish, calling themselves the board of directors of the Union Pacific Railway Company, are plaintiffs in error and you are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable George W. McCrary, judge of the Circuit Court of the United States for the district of Kansas, this 7th day of January, in the year of our Lord one thousand eight hundred and eighty-four.

GEO. W. McCRARY,
Circuit Judge.

216 (Endorsed:) No. 4,441; The state of Kansas ex rel. W. A. Johnston, as attorney general, *vs.* F. L. Ames et al.; citation; filed Jan. 7, 1884; A. S. Thomas, clerk.

217 *Stipulation.*

In the Circuit Court of the United States, district of Kansas.

State of Kansas ex rel. W. A. Johnston, as attorney general,
vs.
F. L. Ames et al.

It is stipulated by and between the parties to this cause that the state shall take no proceedings or steps in the Supreme Court of the state until after the decision or judgment of the Supreme Court of the United States on the writ of error to be taken by the defendant to said order of judgment remanding the said cause, or in conflict therewith, it being understood and agreed that a writ of error shall be taken by the defendant to the order or judgment remanding the cause, returnable at the present term of the Supreme Court of the United States, the state hereby consenting and requesting that the record may be immediately printed without further notice, and the cause advanced by the Supreme Court of the United States, without further notice, to such early day as may suit its convenience, both parties earnestly requesting to be heard at bar.

It is further stipulated by and between the parties that the state may, with the consent of the Supreme Court, read in argument all the records in relation to the Leavenworth, Pawnee and Western Railway Company, filed in the offices of the secretary of state of the

state of Kansas, the secretary of the interior, and in the general land office connected therewith; also, the mortgages of the Kansas Pacific Railway Company filed and recorded in the state of Kansas; also, the minutes of the board of directors of the Kansas Pacific Railroad Company accepting certain provisions of the general corporation laws of the state of Kansas; also, the minutes of the said board in increasing the capital stock of the said company, and changing the name of said company; also, all reports of the same company to its stockholders; also, the pleadings, briefs and arguments of counsel presented and filed by said company in the legislature and courts of the state of Kansas, as well as in the Circuit Court for the district of Kansas and the Supreme Court of the United States.

And it is further stipulated that the defendant company may, with the consent of the Supreme Court, read in argument therein any and all laws or resolutions passed by the legislature of the state of Kansas, whether general or special, concerning or in any way relating to the defendant company or the matter in controversy, including those referred to in the exhibit to the answer filed in the cause; and also all documents and records referred to or set forth in the said answer; also, any or all the official documents in the department of the interior and in the department of the treasury in reference to the defendant company, including the articles of consolidation, and the corporate vote and action adopting the same; also, the maps of the route of the said railway company and the official correspondence in reference thereto; the appointment by the President of the United States of commissioners to examine said road, their reports to the President, and acceptance of the same by the President; also, the certificate of said commissioners of the completion and equipment of the said road; also, the record evidence of the issue of subsidy bonds and patents for lands to the defendant company under the acts of Congress; also, the report of the government directors, and auditor and commissioner of railroads; also, the bills, journals and debates in Congress and acts of Congress in relation thereto.

W. A. JOHNSTON,
Attorney General State of Kansas.

(Endorsed:) No. 4441; the State of Kansas ex rel. W. A. Johnston, as attorney general, *vs.* F. L Ames et al.; stipulation; filed January 7, 1884; A. S. Thomas, clerk.

218 In the Supreme Court of the United States.

The State of Kansas ex rel. W. A. Johnston, as attorney general,
vs.
F. L. Ames et al.

We hereby acknowledge service of citation in the above entitled case and agree that the same may be returnable on the 14th day of January, 1884.

We further stipulate and agree that a motion to advance said cause for hearing may be made before the Supreme Court of the United States on Monday, the fourteenth day of January, 1884, or at any day subsequent thereto convenient to the court, and we waive any notice of such motion, it being understood by the parties to this suit that said motion is to be called up at that time if it can be heard. We further stipulate and agree that the record shall be printed immediately, and that the motion to advance said cause shall be heard whether said record has then been printed or not.

We further stipulate and agree that if said cause is advanced it may be heard at any time which suits the convenience of the court after the 28th day of January, 1884.

W. A. JOHNSTON,
Attorney General state of Kansas.

Topeka, Ks., Jan. 7, 1884.

(Endorsed:) No. 4441; the State of Kansas ex rel. W. A. Johnston, as attorney general, *vs.* F. L. Ames et al.; stipulation; filed January 7, 1884; A. S. Thomas, clerk.

219 UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judge of the Circuit Court of the United States for the district of Kansas, greeting:

Because that in the records and process, and also in the rendering of judgment, and an order remanding a cause in a suit before you, or some of you, between F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, Charles Francis Adams, jr., S. H. H. Clark, G. M. Dodge, Sidney Dillon, David Dows, Jay Gould, Russell Sage, Solon Humphreys, Andrew H. Green, Augustus Schell, John Sharp, Geo. G. Haven, Isaac H. Bromley, Colgate Hoyt, A. L. Conger and Watson Parrish, calling themselves the board of directors of the Union Pacific Railway Company, plaintiffs in error, and the state of Kansas, on the relation of its attorney general, W. A. Johnston, defendant in error, a manifest error has intervened, to the great damage of the said plaintiff in error, as in its petition for writ of error has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States on the 14th day of Jan., 1884, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, chief justice of the said Supreme Court, at Washington aforesaid, this 7th day of Jan., in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] A. S. THOMAS, *Clerk.*

(Endorsed:) No. 4441; The State of Kansas ex rel. W. A.
220 Johnston, as attorney general, *vs.* F. L. Ames et al.; writ of error; filed Jan. 7, 1884; A. S. Thomas, clerk.

221 United States of America, } *ss.*
District of Kansas, }

I, A. S. Thomas, clerk of the Circuit Court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full and correct copy of the record of all the proceedings in said court in the action of The State of Kansas ex. rel. W. A. Johnston, as attorney general of the State of Kansas, *vs.* F. L. Ames et al., calling themselves the board of directors of The Union Pacific Railway Company, No. 4441 in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Topeka, in said district of Kansas, this 7th day of January A. D. 1884.

A. S. THOMAS, *Clerk.*

(Endorsement on cover:) Kansas, C. C. U. S.; No. 1240; F. L. Ames, Elisha Atkins, Ezra H. Baker, F. G. Dexter, Charles Francis Adams, junior, et al., calling themselves the board of directors of the Union Pacific Railway Company, plaintiffs in error, *vs.* The State of Kansas ex rel. W. A. Johnston, attorney general; filed 14th January, 1884; 221 pages.